NOMINATION OF A. MITCHELL PALME

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF HON. A. MITCHELL PALMER TO BE ATTORNEY GENERAL

PART 2

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NOMINATION OF HON. A. MITCHELL PALMER FOR ATTORNEY GENERAL.

FRIDAY, AUGUST 8, 1919.

UNITED STATES SENATE,
SUBCOMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to the call of its chairman, at 10.30 o'clock a. m. in the room of the Committee on Privileges and Elections, Senator William P. Dillingham presiding.

Present: Senators Dillingham (chairman), Sterling, Overman, and Walsh.

Present also: Hon. A. Mitchell Palmer.

Senator DILLINGHAM. I desire at this time to place in the record a copy of a memorandum found in the dispatch bag lost by Dr. Albert and mentioned by Senator Frelinghuysen in connection with the publication in the New York World regarding an interview had by Mr. Palmer with the President. This has been furnished to me by the State Department, and is a translation of the original document, which was in German. I am informed by the State Department that no other paper relating to Gen. Palmer was found in the papers taken.

(The memorandum referred to is here printed in full as follows:)

[Translation.]

NEW YORK, *July 23, 1915.*

CONVERSATION WITH LEGAL AGENT LEVY AND MR. JOHN SIMON.

Levy advises regarding a conference with M. P. Thereafter M. P. saw Lansing as well as Wilson. He informed both of them that an American syndicate had approached him which had strong German relations. This syndicate wishes to buy up cotton for Germany in great style, thereby to relieve the cotton situation and at the same time to provide Germany with cotton. The relations of the American syndicate to Germany are very strong, so that they might even possibly be able to influence the position of Germany in the general political question. P. M. therefore asked for a candid confidential statement, in order to make clear not only his own position but also necessarily the political opportunity. The result of the conversation was as follow:

1. The note of protest to England will go in any event, whether Germany answers satisfactorily or not.

2. Should it be possible to settle satisfactorily the *Lusitania* case, the President would bind himself to carry the protest against England through to the uttermost.

3. The continuance of the difference with Germany over the *Lusitania* case is "embarrassing" for the President in carrying out the protest against England. He will not create the impression that the note to Germany and the protest to England are a "bargain," for he has undisputed American rights to uphold.

4. A contemplated English proposal to buy cotton in great style and invest the proceeds in America would not satisfy the President as an answer to the protest, because that refers to the violation of American rights and not only to a question of money. (N. B.—M. P. believes that it will be possible to bring this plan to the front with the assistance of Southern Senators.)

5. The President, in order to ascertain from Mr. M. P. how strong the German influence of his syndicate is, would like to have trend of German note before the note is officially sent, and declares himself ready before the answer is drafted to discuss it with M. P., and eventually to so influence it that there will be an agreement for its reception and also to be ready to influence the press through a wink.

6. As far as the note itself is concerned, which he awaits, so he awaits another expression of regret, which was not followed in the last note. Regret together with the statement that nobody had expected that human lives would be lost and that the ship would sink so quickly.

The President is said to have openly declared that he could hardly hope for a positive statement that the submarine warfare would be discontinued. Germany should only, out of consideration for friendly America, declare herself to be prepared to discuss with the United States and to work together with her to make impossible the destruction of American lives. Germany shall declare herself ready to make the strongest efforts to reach this goal, but to expect that America will work with her in this respect. The President is of the opinion that Americans who in the present situation take passage on a munitions-laden ship "take their lives into their own hands." The President seems to expect that we ourselves shall set forth an agreement in the matter, possibly leaving out the principle and fall back upon the above-mentioned mutual endeavors.

The foregoing information sounds almost unbelievable. If it is correct, the President has not understood the German note at all, and, on the other hand, does not know what he says in his note. The diplomatic expressions and the meaning of a "deliberately unfriendly act" do not seem to be clear to him.

M. P. again emphasized how very much the President was upset and disturbed about the matter, how much he wishes to come out of the matter, how he emphasized that the note to England had been ready when the *Lusitania* case came up, and how he held out to M. P. that if he could clear up this matter how very much obliged to him he would be.

If the plan is to be carried through, he promises beforehand telegraphic connections with Germany.

Senator DILLINGHAM. I also place in the record the brief filed with the committee by Hon. Merton E. Lewis in opposition to the confirmation of the nomination of Gen. Palmer.

(The brief referred to is here printed in full, as follows:)

[Before the subcommittee of the Judiciary Committee of the Senate in the matter of the confirmation of the nomination of A. Mitchell Palmer for the office of Attorney General of the United States.]

BRIEF IN OPPOSITION TO THE CONFIRMATION OF THE NOMINATION.

Harvey T. Andrews, attorney, 115 Broadway, New York City, N. Y.
Merton E. Lewis (of counsel), 27 Pine Street, New York City, N. Y.

AS TO THE GOOD FATH OF THE SALE.

Gen. Palmer claims that the property of the Bosch Magneto Co. was well advertised. I am prepared to concede that sufficient money was expended in advertising the property for sale, but I am not convinced that the sale was well advertised.

In addition to the newspaper advertising which was exceedingly expensive, the Alien Property Custodian also prepared a "prospectus." On this subject he says (p. 159): "We had a large mailing list." "Everybody who wrote and asked us to be advised was put on our list, and we sent this prospectus to them."

The prospectus carried a balance sheet and a five-year operating statement of gross sales and net profits, prepared by John A. MacMartin, an employee of the Alien Property Custodian.

The balance sheet purported to give the true financial condition of the company as of September 30, 1918.

Whether it did or not is a question.

It does not purport to be based upon any appraisal, nor is there any statement that it is based upon the books of the company. The omission to make such a statement justifies the inference that it was not based either upon an appraisal or upon the books of the company.

On page 15 of the prospectus is a statement that "The Manufacturers' Appraisal Co. has recently completed an appraisal of all of the property of the company."

A summary of such appraisal is printed on the last page of the prospectus. The date of the appraisal does not appear.

I call attention to the totals at the bottom of the page:

Land	$149,396.30
Building items, present value	732,254.97
Equipment items, present value	1,394,807.70
Total	2,276,458.97

I now call attention to the values placed upon the same assets as set forth in the schedule of assets in the balance sheet prepared by John A. MacMartin, appearing on page 14 of the prospectus:

Land	$81,211.62
Buildings	598,097.50
Equipment	724,827.79
	1,404,136.91
Less reserves for depreciation May 1 to Sept. 1	55,932.80
Total property and plant, less depreciation	1,348,204.11

The Manufacturers' Appraisal Co. in its report of April 30, 1918, said that the land, buildings, and equipment were worth in the aggregate $2,276,458.97. They also said that according to standard practice this total might properly be increased for organization and legal expenses and for interest during construction to the extent of 15 per cent of the total, $341,468.55, making a total value of $2,617,927.52.

Let me summarize as briefly as possible the assets which the purchaser acquired by the purchase of 250 shares of the stock of Bosch Magneto Co. for the sum of $4,150,000.

At page 122 of Gen. Palmer's statement, he says: "We sold the stock." "That carried everything that the company had."

This is what the company had—

Cash on hand and in bank	$390,343.79
Certificates of deposit	150,000.00
Accounts receivable (net)	347,691.55
Liberty loan bonds and war stamps	194,752.42
United States 4½ per cent certificates of indebtedness	450,900.45
Land, appraisal by Manufacturers' Appraisal Co. of Apr. 30, nine months before sale	149,396.30
Building items, present value same appraisal	732,254.97
Equipment items, present value same appraisal	1,373,664.30
15 per cent of last three items according to standard practice as certified by Manufacturers' Appraisal Co	341,468.52
(See last page of prospectus)	4,290,472.30
Total merchandise, less reserves	3,031,123.97
Accrued interest	6,065.89
Prepaid taxes, insurance, stationery, office supplies and miscellaneous	26,263.20
Making a total of	7,353,925.26

of actual assets at, either the appraised value as appraised by the Manufacturers' Appraisal Co., or at set up in the balance sheet prepared by John A. MacMartin, a certified accountant in the employ of Mr. Palmer.

Attention is called to the fact that the patents, copyrights, trade-marks, and good will were valued at $1 only. It is unnecessary to assert that the plant and equipment would have little value to a purchaser without such patents, copyrights, and trade-marks.

Assume that the entire ownership of the business had belonged to the estate of a deceased person, and assume that it had been necessary to appraise it for the purpose of levying an inheritance or transfer tax. I can produce witnesses, experts used by the State of New York as appraisers of decedents' estates, men of large experience in appraising large estates, who will testify under oath that the patents, trade-marks, copyrights, and good will had an actual value for the purposes of taxation of at least $6,000,000. If we were to discount this amount by one-half, we still have a valuation of more than $10,000,000. But that is not all.

The balance sheet prepared by Harris-Allen & Co., chartered accountants, as of April 30, 1918, showed an item of indebtedness, owing to the company by Robert Bosch of more than $1,000,000.

In the effort apparently made to minimize the value of this great and prosperous company in the minds of prospective bidders and in order to justify a sale thereof to a bidder who was not a "fool, some person who would pay not much more than $4,000,000 for the property," as Gen. Palmer said at the hearing, this item of $1,000,000 was entirely eliminated from Mr. MacMartin's balance sheet.

It may be argued that the account is valueless. Whether that be true or not, the company owns it, because Mr. Palmer says that the sale of the 250 shares of stock carried to the purchaser "everything that the company had." It had this claim, and the purchaser acquired it. We do not know whether the new company had it or not, but it was sold as a part of the old company's assets. Somebody has it, and we may reasonably expect either the purchaser or the new company, whichever is now the owner, to assert his or its claim against the proceeds of the sale of the Bosch property on deposit in the Treasury of the United States. Such proceeds, I suppose, are held for the account of Robert Bosch, an enemy alien.

It requires little imagination to predict the result of the present owner's claim for this money out of the proceeds of the sale of that property whether the claim is now the property of American Bosch Magneto Co. or of Martin Kerns.

In seeking to justify the sale at the time, under the conditions and at the price for which it sold, Mr. Palmer admits that the company had on hand $3,000,000 worth of merchandise "in course of manufacture under contracts which were about to be canceled. He seems to regard this as a liability. I regard it as an asset and a very valuable asset. The company had been engaged almost exclusively in the manufacture of magnetos for the Government. It had been able to secure all the raw material that it could use for the purpose of filling the Government's orders. The demand for magnetos is as steady as the demand for wheat. The Government's orders were filled with little profit to the company. The cancellation of such orders left the company free to sell its products to private customers at such profit as the company might choose to demand.

In addition to $3,000,000 worth of material, it had the contracts presumably with the Government for the manufacture of such merchandise, which contracts were "about to be canceled." Under similar conditions, other manufacturers have been diligently engaged, since their contracts were canceled, in presenting their claims for damages and the War Department has been equally diligent in acting upon such claims and in writing checks for the damages as finally adjusted. Whether the contracts "about to be canceled" have actually been canceled or not, I do not know. If not, then the new company has not lacked for business since it came into possession of the plant and $3,000,000 worth of merchandise.

If they have been canceled then it is a reasonably safe guess that claims have already been filed by the new company for its damages as a result of such cancellation. I can only speculate as to the amount of such claims. Whatever the amount, it will doubtless, when adjusted, amount to a substantial sum, and such material was immediately upon the cancellation of the contracts by the Government, available for the filling of orders of private customers.

One of the items shown on the balance sheet prepared by Mr. MacMartin is:

Eisemann stock $90,000

This stock, as I understand the matter, was carried on the books of the old company at the sum of $90,000, although it was well known to be worth much more.

The Harris-Allen Co. statement of April 30 shows it as an asset of the company. Mr. MacMartin's balance sheet of September 30 also shows it as an asset.

On page 10 of the prospectus is the unqualified statement that it, meaning the Bosch Magneto Co., "owned 900 shares out of a total of 2,000 shares of the capital stock of the Eisemann Magneto Co., of Brooklyn, N. Y."

The next paragraph, however, contains the information that these 900 shares of stock have been taken over by the Alien Property Custodian "as the property of Robert Bosch, an enemy." At page 172 of Gen. Palmer's statement he says, "it belonged to Robert Bosch and we announced all that at the sale, everybody at the sale knew perfectly well that instead of getting 900 shares of Eisemann's stock they were buying a lawsuit." The stock sold for $605 a share; the proceeds of the sale are in the Treasury of the United States. Gen. Palmer says that the proceeds are owned by Robert Bosch. If Robert Bosch is not the owner then the new American Co. is the owner. In a contest between these two claimants, it will be interesting to watch the developments. The amount at stake is $544,500. To me it seems that the company's title to this stock was intentionally and deliberately clouded in order to further minimize the value of the company's assets, as represented by the 250 shares of the stock offered for sale.

The singular and unusual situation is presented of a trustee, as Gen. Palmer has characterized himself, making statements at a public sale of the corporation's assets, which were bound to lower in the minds of prospective bidders the value of the property which appears upon the corporation's books and of which property he was the trustee. Of course, the public statement which Gen. Palmer says was made at the time of the sale could have had no other effect than to reduce the amount of the bid for the property offered for sale. Taken in connection with the unexplained and, I believe, unexplainable reduction of the value of the land, buildings, and equipment as discolsed by a comparison of the appraisal by Manufacturers' Appraisal Co. and the balance sheet of Mr. MacMartin, it has created in my mind—and I think it must create in every unbiased mind—a doubt of the good faith of the men who represented the Alien Property Custodian. I have not charged, and do not now charge, bad faith on the part of the Alien Property Custodian himself. I presume that he may have had little if any actual knowledge of what did occur, either in preparing for or conducting the sale. Under the law he is charged with, and I understand has specifically assumed, full responsiblity for all of the acts of his subordinates. He had an enormous responsibility. Mistakes were inevitable. This minimizing of the assets does not look to me to be a mistake.

Apparanetly the same course adopted in connection with the Eisemann stock was followed in dealing with the patent situation.

The prospectus on its second page shows a list of 120 United States patents by number. An undivided half interest in each of two United States patents; 21 applications pending for patents, a registered trade-mark, and a trade-mark application pending.

A note underneath the list of patents, etc., states that they will be sold subject to the rights thereto and thereunder, if any, of the Bosch Magneto Co., the entire capital stock of which is included in this notice.

It is impossible to determine from anything contained in the prospectus who was supposed to own all of these patents and patent applications. Bidders were warned, howevr, that the question of ownership thereof was a matter of controversy, and the effect of such notice was to reduce the value of the patents in the minds of prospective bidders. This I believe was the intention.

The Bosch Magneto Co. actually owned a large number of patents, the purchasers of the stock acquired the title to them. The new company is now using them and enjoying large profits from their use. The effort to cloud the title to the patents could have been for no other purpose than to bring about a sale of the entire property for a sum around $4,000,000.

The fact that the company owned the patents, or a large number of patents, is proved beyond the possibility of contradiction by the records of the Patent Office. Gen. Palmer's statement that the company did not own a single patent is completely and effectually disproved by such records.

Other valuable assets were listed in the balance sheet with only nominal values. This was for the purpose of still further reducing the gross assets.

The act of Congress known as "the trading-with-the-enemy act" became a law on October 6, 1917. Section 12 of the act confers upon the Alien Prop-

erty Custodian all the powers of a common law trustee in respect of all property other than money, which shall came into his possession in pursuance of the act. This act was amended by a provision of the urgent deficiencies bill of March 28, 1918, which reenacted the provisions of section 12 of the trading-with-the-enemy act on this subject and in addition gave to the Alien Property Custodian power to make any disposition of such property, by sale or otherwise, in like manner as though he were the owner thereof.

Prior to this amendment the custodian's' power to sell was limited to those cases in which a sale might be regarded as necessary for the prevention of waste and to protect such property and to the end that interests of the United States in such property and rights, or of such persons as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded.

The language of the amendment does not materially change or enlarge the powers of the Alien Property Custodian over property taken by him into his possession. It does give him the right to sell, for purposes other than the prevention of waste and the preservation of the proceeds of such sale. It gives him this power in addition to, not in violation of the power of a common-law trustee. He still remains a common-law trustee by the very terms of the amendment of March 28, 1918. An absolute owner of the Bosch Magneto Co. factory might lawfully tear it down and burn the timbers for firewood. He might smash the machinery with a sledge hammer and tear up his patents or give them away, for any reason or without reason.

A common-law trustee, however, even when vested by statute with all the powers of an absolute owner could not safely do those things without a valid and sufficient reason. He was operating under war legislation. The power conferred upon him could be exercised when, and only when, it was necessary in the performance of his duty. In the event of an invasion by an enemy army, he might lawfully, perhaps, have destroyed the factory and its equipment to prevent its falling into enemy hands.

There is no doubt that he had the power to sell enemy property under proper conditions, and to give to the purchaser a good and sufficient title. Before doing so it was his duty to be sure that it was enemy property. He should have been sure, too, that some good and sufficient reason for the sale actually existed. As this was an extraordinary power, conferred upon him under extraordinary conditions, he must be able to show that some extraordinary reason existed for its exercise by him. It was sold after the armistice had been signed, after the President had advised Congress that the war had come to an end. With an absolute owner the new condition would have made no difference. An absolute owner would have been under no obligations to anyone, unless perhaps, to his creditors. An absolute owner could have lawfully given the property away, or could have sold it for a nominal consideration. A public officer could do neither. There was a reason for giving him this power, and it was his duty to exercise that power for the consummation of the purpose for which it was given. It was his duty as a common-law trustee to make sure that the property be not sold for an inadequate price. He was at the time of the sale of this property still vested with all the powers of a common-law trustee, and if so, subject to all of the duties of such a trustee.

The effect of the amendment was not to decrease either his powers or his duties. It permitted, and it only permitted, a sale when authorized by the President to sell. In making a sale he was required to act under the supervision and direction of the President, "and under such rules and regulations as the President shall prescribe."

From the comparison of the two statements hereinbefore referred to it appears that the value of the assets was established by the appraisal made by Manufacturers Appraisal Co., and that such value was written down to the extent of almost 50 per cent by Mr. MacMartin in the balance sheet which he prepared for use in the prospectus which was sent broadcast among prospective bidders.

I submit that a trustee, a man charged under the law with the duty of caring for and managing the properties of others, particularly others who, under the law, were incompetent to care for their own, owed it to himself and, under the circumstances, to the President who appointed him and to the Congress which enacted the law which created the office to display a more just appreciation of his responsibilities than Gen. Palmer has shown.

The beneficiaries of the sale are the friends and associates of Gen. Palmer. Not only was the sale made for an inadequate consideration, but it was struck

down to bidder who represented one Martin Kearns, of Altoona, Pa. Mr. Kerns is the treasurer of Bethlehem Motors Corporation. Mr. Arthur T. Murray is the president of that company. Mr. Murray is a friend of Gen. Palmer, and was placed by Gen. Palmer in control of Bosch Magneto Co. shortly after the property came into Gen. Palmer's custody. He is now the president of the American Bosch Magneto Co., and has been since its incorporation.

Gen. Palmer also at the same time, or at substantially the same time, that he appointed Mr. Murray as managing director appointed George B. McDonald, the treasurer of the old company—he is now the treasurer of the new company. Mr. A. H. D. Altree, Leon W. Rosenthal, and John A. MacMartin, all of whom were appointees of Gen. Palmer and engaged in the management of the business of the old company, are now officers or directors of the new company. They were given positions, substantially the same positions, in the new company which they had previously held in the old company, in violation of rules established by Gen. Palmer, and, as he himself admits, with his consent.

Not only that. Some, if not all, were given stock in the new company, as Gen. Palmer admits, for "services," as he says at page 181 of his testimony, "25 or 50 shares, a small amount." Whether Mr. MacMartin, who prepared the balance sheet and eliminated to the extent of nearly $3,000,000, the difference between the amount of the surplus as shown on the Harris-Allen balance sheet of April 30 and the MacMartin balance sheet of September 30, does not appear in Gen. Palmer's testimony.

At the last hearing given by the subcommittee Gen. Palmer sought to justify the sale by what he referred to as the trend. He admits (p. 175) that the average earnings for a period of five years and four months prior to the sale were nearly a million dollars a year. He says "I do not care. But what manufacturers care about is not the average, but the trend."

In order to justify the sale of $4,150,000, he calls attention to the net earnings for the year 1918, $661,000 and upward, and says that such earnings represent a dividend of approximately 15 per cent upon the price for which he sold the property. He might with propriety have discussed the earnings for other years. As a common law trustee, he should, I think, have gone more into detail on the subject of the "trend." I do not agree that his agreement justifies the sale at the price for which it sold. My study of the figures leads to the contrary conclusion.

Taking the five-year operating statement of gross sales and net profits as printed in the page next to the last page of the prospectus, we find the amount of such sales and the net profits of each of five periods, the first period for 15 months, the other for 12 months each.

With this information we are able to ascertain the monthly earnings as follows:

Averaged per month:	
Sept. 30, 1914	$350,535.77
Sept. 30, 1915	384,754.95
Sept. 30, 1916	334,085.21
Sept. 30, 1917	378,250.72
Sept. 30, 1918	304,236.72

A variation of approximately $80,000 between the best and the poorest years.

At page 13 of the prospectus the Alien Property Custodian is quoted as follows:

"Since the property was taken by the Alien Property Custodian (May 1, 1918,) it has been the aim of the management to devote it to its full capacity to the war work and to furnish the output to the Government on a comparatively small margin of profit."

The average net earnings per month for the same period of five years and three month were:

For the period ending:	
Sept. 30, 1914	$132,197.23
Sept. 30, 1915	129,705.01
Sept. 30, 1916	67,220.51
Sept. 30, 1917	39,880.41
Sept. 30, 1918	55,115.73

The first of the above periods may be said to be a prewar period.

The shrinkage in the monthly earnings for 1915 is less than $2,500 per month and is negligible and proves nothing.

In 1916 the volume of business was approximately $16,000 per month less than in 1914, and this shrinkage probably may be accounted for by the increase in the cost of all kinds of war material and of labor, due undoubtedly to foreign demand for such material.

In 1917, gross sales increased to the extent of nearly $50,000 a month over the sales of the previous year, while net profits were reduced by slightly less than $30,000 per month.

For this reduction in net earnings it is probable that the excess profits and income tax law may have been to a considerable extent responsible.

During seven months of the period ending September 30, 1918, the business of the company was managed by its owners, and for five month by the Alien Property Custodian. During the custodian's management practically the entire output of the plant was taken by the Government and probably at prices which did not include much, if any, profit to the company. Notwithstanding this the profits for the year exceeded $661,000, a sum equivalent to a dividend of almost 15 per cent per annum on the entire amount of the bid. If the profits of the company during the seven months' period ending April 30, 1919, were large enough to produce net earnings of $661,000 and upward for the year ending September 30, 1918, the last five months of which period there was probably little, if any, profit from operations for the Government, then it is fair, I think, to assume that had the company continued under its own management, instead of under the management of the custodian, its earnings would have continued at substantially the same rate for the balance of the year. Such earnings under those conditions would probably have amounted to more than $1,000,000. That amount would be equal, approximately to 25 per cent on the bid price at which the property was sold.

The gross sales for the period it will be noticed were nearly $900,000 less than for the preceding 12 months' period. This fact tends to confirm Gen. Palmer's statement that Government business netted to the company little, if any, profit. Notwithstanding this large reduction in gross sales, due undoubtedly to the policy of the Alien Property Custodian in furnishing "the output to the Government on a comparatively small margin of profit," the net profits for the year increased over the profits of the year before to the extent of about $15,000 a month for the entire period, or more than $180,000 in that year.

As I have said, Gen. Palmer (p. 175) seeks to justify the sale of this exceedingly valuable property by reference to conditions which he characterizes as the "trend." He says that any purchaser, in his judgment "would be a fool if he had bid very much more than $4,000,000 for the property."

I submit that the trend, if there was any trend, was upward, not downward; that the armistice having been signed, there was reason to believe that the company would cease doing business at little or no profit for the Government, and would resume doing business at a normal profit. Gen. Palmer should have found a better argument to justify the sacrifice of this property or he should not have attempted to justify its sale at $4,150,000.

No reason has been given for the sale of the property of Bosch Magneto Co. at the time and under the conditions imposed by the Alien Property Custodian.

(*a*) It was sold after the armistice had been signed.

(*b*) It was sold at the plant in the city of Chicopee, Mass., instead of at the principal office of the company in the city of New York, where it might lawfully have been sold.

(*c*) It was sold under terms that were harsh, compliance with which was difficult.

The business was established in 1906 and had grown, and, by its growth, it had perhaps done more than any other business in America to make possible the development of the industry of manufacturing automobiles.

Bethlehem Motors Corporation exists and is doubtless a money-making enterprise for the reason that the Bosch Magneto existed and produced the best magnetos in the world.

The magneto which this company manufactured made the automobile a thing of usefulness rather than a toy. Millions of dollars of profit, perhaps hundreds of millions, have been made in the automobile industry since this company was organized and by the use of its invention.

Prior to the introduction of the magneto into the make-up of the automobile, automobiles were playthings, and rather unsatisfactory playthings.

The company had carried on its business peacefully and under the protection of letters patent issued by the United States.

President Wilson had declared that:

"So long as they (German aliens) shall conduct themselves in accordance with the law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons except so far as restrictions may be necessary for their own protection and for the safety of the United States; and toward such alien enemies as conduct themselves in accordance with law, all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States."

This was said by the President in his first proclamation on the subject, made on the day that we entered the war. The authority for this proclamation is found in section 4067 of the Revised Statutes.

This was in accord also with existing treaty provisions.

I quote from article 23 of the treaty with Prussia of 1828, which, I understand, had not been abrogated, and which I also understand is still in force:

"If war should arise between the contracting parties the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects, without molestation or hindrance; and all women and children, scholars of every factulty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and not be molested in their persons nor shall their houses or goods be destroyed, nor their fields wasted by the armed force of the enemy into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force the same shall be paid for at a reasonable price."

Article 24 of the same treaty reads:

"And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this or the preceding article, but, on the contrary, that the state of war is precisely that for which they are provided and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and of nations."

No act of hostility had ever been committed by any person connected with the management of the company. The best proof of the truth of this statement is found in the fact that no person connected with the company or the conduct of its business has ever been interned.

The war was ended. Germany had been defeated and had acknowledged her defeat. No war necessity existed which made the sale necessary. A continuance of the business under the management of the men who had created the business would have harmed neither the Government of the United States nor any of its citizens.

The sale at Chicopee was unnecessary. The fact that it was advertised to take place at the factory instead of at the principal office of the company has not been explained. The President had exercised the power which the law gave him in all such cases and had made an order under which the sale could legally have been made in New York City, in the State of New York, under the laws of which State the company was incorporated.

The trip to Chicopee could only have been regarded by prospective bidders as a hardship. Probably very few of the people to whom the prospectus was sent had ever heard of the place. Probably fewer knew how to get there.

Gen. Palmer says that he had the right to sell the property at Chicopee and he did sell it there. Perhaps he may have had the strict legal right, but how about his duty as a common-law trustee? He has not ceased to be such a trustee. He had all the powers of a common-law trustee and he could not have those powers without assuming the responsibilities which accompany the exercise of the powers. As I understand the obligations of a common-law trustee he is required in selling the property committed to his trust to sell it under such terms and conditions as will realize the greatest amount of money. Gen. Palmer says, page 176 of his testimony, that at the time of the sale "the automobile business was on the flat of its back. When automobile manufacturers were not being allowed to build automobiles, either pleasure cars or trucks, * * * that is the market that this sale went into."

Gen. Palmer further said:

"It may be that Mr. Lewis will say that we ought to have waited for a better market. I deny that absolutely. * * * I was not going to hunt for the best

moment to sell the German property in America. * * * So I sold this property, while the war was on * * * and advertised it, gentlemen, with an idea in the back of my head, as it was in the back of your head when you passed this amendment to the trading with the enemy act, that we should use this power to strike a blow at the Germans."

No person was permitted to inspect the property without first making a deposit of $50,000 with the Alien Property Custodian.

No person would be recognized as a qualified bidder without first having deposited $100,000 with the Alien Property Custodian. Gen. Palmer admits (p. 157) that $100,000 was probably the largest deposit ever required of any prospective bidder.

I suppose that Gen. Palmer may have had the right, in the sense that he was not prohibited by statute, to require a deposit of so large a sum in order to qualify a prospective purchaser as a bidder at the sale. Was it consistent with his duties as a common-law trustee? Was the imposition of such harsh and difficult terms calculated to encourage the attendance of bidders?

Did the Alien Property Custodian really desire to realize all that could be realized from the sale of this property?

Did he know in advance that his friend, Martin Kerns, intended to buy this property at the sale at the city of Chicopee? Was the sale held at Chicopee and were those terms imposed in order that competition with Mr. Kerns might be restricted? Did he know in advance that Mr. Murray, whom he has known for years, was to be the president of the new company? Did he know that as long ago as June, 1918, it was the declared intention of his subordinates in charge of the Bosch Magneto Co. plant to get the property for themselves?

Did he authorize Martin Kerns and one Rosenthal to dissolve the old Bosch Co. and surrender its charter?

He received on May 1, 1918, a corporation which had a surplus of more than eight and a half million dollars, as appears by the financial report prepared by Harris, Allen & Co., chartered accountants in his employ.

Did that property depreciate in five months to the extent of nearly $3,000,000?

Mr. MacMartin's financial statement, as shown in the prospectus sent to all prospective bidders, showed a net surplus of only $5,699,667.07, while the Harris-Allen statement made five months prior to the statement made by Mr. MacMartin showed surplus of $8,587,457.61.

How does Gen. Palmer account for this depreciation? The net profits for the year ending September 30, 1918, the period during which the loss of surplus and the shrinkage of assets took place, if there was any such loss and shrinkage, actually increased to the extent of more than $180,000, as shown by MacMartin's statement on page 15 of the prospectus.

Was the Alien Property Custodian a common-law trustee or was he blind? Did he know of these things at the time of the sale or did he avoid knowing them?

If he did not know, why did he not know? If he did know, why did he permit the sale to his long-time friend, Martin Kerns? Was it because he knew that Martin Kerns was planning to "get the property" for himself and his friends?

I can only conclude, from the conduct of the Alien Property Custodian, in connection with this transaction, that he regarded himself no longer as a common-law trustee. He evidently supposed that the amendment to the law gave him the right to deal with this property as he might see fit.

I feel that I am justified in this conclusion by the statement of Mr. Lee C. Bradley, general counsel for the Alien Property Custodian, made in the course of his argument before Hon. John C. Knox, a judge of the United States district court, at New York City, as such statement appears at page 15 of the printed brief of Messrs. Towne, Bailley & Thompson, solicitors for Salamandra Insurance Co., in an action brought by that company against New York Life Insurance & Trust Co. "Mr. Bradley * * * stated * * * the Alien Property Custodian was unable to submit proofs or evidence to sustain his findings * * *, that the custodian had no evidence of a legal character which would be admitted in any court of justice to support his findings, but that the said custodian has so found and that his finding was final and conclusive and could not be inquired into in any court and asked that the bill be dismissed for want of jurisdiction." He urged that the "trading-with-the-enemy act" and its amendments was a war measure "and that by its enactment Congress abrogated the Constitution and granted full and absolute power to the Alien Property Custodian to determine after investigation but without affording a hearing that

any particular property in question was the property of an alien enemy, and to demand its transfer * * * and if not transferred * * * to seize it."

Mr. Bradley further insisted (p. 16, same brief) that the Alien Property Custodian "had the power to demand the Woolworth Building, where the court was then sitting, as enemy owned, without giving the owner prior notice or opportunity to be heard, and that if not forthwith transferred * * * the Alien Property Custodian had the power under the act to seize and take possession of the building, leaving to the owner, as his only remedy the right to sue for recovery." That the Alien Property Custodian "might proceed to the vaults of the New York Life Insurance & Trust Co., forcibly enter such vaults and capture and seize the funds and bonds demanded."

Is it surprising that a public officer entertaining such views as to the extent of his power should cherish the notion that as a common-law trustee he was justified in selling out the property of the Bosch Magneto Co. at a time when the automobile industry was flat on its back?

Have we any reason for surprise when we find a man holding such views minimizing apparently with cool deliberation the value of the property which he as a common-law trustee is about to sell? Is there anything startling in the proposition that a man who holds himself out as having extra constitutional powers in the administration of the affairs of his office should be willing to permit his friends and subordinates "to get" property which he was about to sell at a price far below its true value?

Gen. Palmer says (p. 178): "If I had conducted an open, honest sale * * * and got within 75 or 80 per cent of the appraised value of the property, and good Americans bought it, I let them go; and I hope to God they all make money out of it before they get through with it."

I suppose that Gen. Palmer will admit that "good Americans got it." I suppose that he will also admit that the "good Americans" who got it have made money. Perhaps he will be willing to admit that they have made a lot of money; that they had the chance nearly to double the money that they invested in the stock of the American Bosch Co. It must be remembered that 60,000 shares of the stock were authorized, a portion of which was offered to the public at $65 per share. It should also be remembered that in the advertisement of the stock the statement appeared that a majority of the 60,000 shares had already been disposed of, but nothing was said as to the price at which it was disposed of. Some of Gen. Palmer's friends got some of the 60,000 shares for their "services." Perhaps more of his subordinates and friends got stock for their "services"—more, perhaps, than he knows of.

It would appear that Gen. Palmer intended the committee to infer that the property did sell for 75 to 80 per cent of its appraised value.

It will readily be seen that this is not the fact. The only appraisal of which we have any knowledge is the appraisal of Manufacturers' Appraisal Co., upon which the Harris-Allen financial statement was based. A copy of that statement is in the possession of the committee, and I have a copy of the same report. That report shows that the value of the property at the time Gen. Palmer took it into his custody and management was nearly $9,000,000; that its surplus was more than $8,500,000 after deducting all indebtedness, including a capital-stock liability of $250,000.

The property was sold for less than 50 per cent of the amount of the company's surplus. I suppose that Gen. Palmer, in view of the fact that "good Americans" got the property, has reason to thank God that they got it so cheaply.

Gen. Palmer in his report to Congress of February 15, 1919, says, page 15: "Foreign capital ought to be welcomed here, but only if it becomes promptly naturalized and remains loyal to the country of its adoption." He proceeds in his report to justify his policy of "dislodging the hostile Hun within our gates."

How much foreign capital will be likely to come within "our gates" if his view that it is welcome only "if it becomes promptly naturalized and remains loyal to the country of its adoption" shall be adopted?

My information is that English investments before the war exceeded many times over the amount of German investments. Gen. Palmer says that "a hybrid Americanization is no less dangerous in industry and commerce than in individuals." Does he expect to have the statement taken literally? If so, will he recommend driving out English capital? Such capital is just as "hybrid" as any other foreign capital.

As a result of the war America has greater wealth at this time than ever before in her history. Have we more than we want? Shall we drive some of

it out? Suppose that we were to threaten to confiscate all of the property in this country which fails within a given period to become "promptly naturalized." What would be the effect upon our railroad securities and our great industrial enterprises? What would happen if every share of the capital stock of our great corporations in the hands of foreign owners were to be thrown upon the market to be sold at the best price obtainable in order to prevent such foreign money from being naturalized? Such talk is nonsense. Gen. Palmer did not mean what he is quoted as saying. Some subordinate must have written that part of his report. It can not be possible that a man regarded by the President as competent to fill the great office of Attorney General of the United States can hold such views.

Suppose we were to adopt the views expressed in his report, what would become of American investments in Mexico, in China, in Japan? How long would our great banking institutions dare to remain in any one of those countries? How long would they remain in South America? This country has from time to time insisted that we have the right to participate in international loans—in China, as an example. Must our money in China become naturalized in China? Must our money invested in the industries of Mexico be naturalized in Mexico and become Mexicanized? Is not such money now invested in China hybrid Chinese and money invested in Mexico hybrid Mexican? If German money invested in America is hybrid American, the English money invested in America is also hybrid American and French money is hybrid American.

It is pitiful to one to see an official holding the high position which Gen. Palmer holds descend to such claptrap arguments in order to justify his conduct of the office of Alien Property Custodian. I venture the opinion that the man responsible for this part of the report has already been summarily dismissed from office.

"By resort to the time-honored device of having them (amendments to the trading-with-the-enemy act) carried as riders on appropriation bills" Gen. Palmer was able, he tells us in his article published in Scribner's Magazine for July, to "put teeth into the law." The result was, as he says, that "we had on what might be called the American front a commercial offensive of wide scope and far-reaching character." Thereafter and as a result thereof he became apparently the lightning change artist, the Dr. Jekyl and Mr. Hyde of the situation. At one moment he was the commander in chief on the American front, with an army of well-drilled and well-compensated legal advisers, aids, and assistants, engaged in conducting "the counteroffensive which finally drove the German Empire to surrender," as he himself modestly says in his Scribner's article. I assume, of course, that he wrote this himself.

The next moment he was the common-law trustee, appointed by the President under the provisions of the trading-with-the-enemy act, to manage the property that might be conveyed, transferred, assigned, delivered, or paid over to him, under the supervision and direction of the President and "under such rules and regulations as the President shall prescribe.

Before the adoption of these amendments Gen. Palmer says that he was a "mere conservator of enemy property." He forgets that after the amendments he was still a common-law trustee, by the specific language of the statute under which his appointment was made, and that he continued to be a common-law trustee until he resigned to accept the office of Attorney General.

It was under the provisions of one of these amendments that Gen. Palmer was able to transfer to the American Bosch Magneto Co. the "considerable number" of patents which he says (p. 111 of his report) covered "every conceivable phase of invention and improvement in the art" (of manufacturing magnetos) "and which embodied the ideas of the best and most experienced German engineers in this branch of electrical science."

By their seizure and sale, he says, 'in conjunction with the producing units—the factories—the American purchasers and the industry generally are insured against German competition within the field covered by the patents."

These patents, it should be remembered, are the patents concerning which Gen. Palmer in his testimony said (p. 167) that "if put on the books of the Bosch Magneto Co. at a dollar, it was an overappraisement, because the Bosch Magneto Co. did not own one of them, and we said so in perfectly plain English in the prospectus itself."

They were sold, he says in his report, in conjunction with the producing units. They were important to and used with the business. He was able to dispose of them by reason of the amendments which were adopted by resort

to the "time-honored device" of having them carried as riders on appropriation bills.

Probably the best and most convincing evidence of inadequacy of a consideration, the bid price for which the property was struck off, is found in the fact that the capital stock of the new company sold last week on the New York Stock Exchange at upward of $121 per share. The newspapers from day to day have carried items as to the present earnings of the company. In the New York Sun last week was a statement that the stock is actually earning $20 per share. This is equivalent to an annual return of $1,200,000 on 60,000 shares of stock. If each share of stock actually represents an investment of $65 in cash, the total investment is the sum of $3,900,000. One million two hundred thousand dollars of earnings would permit the payment of dividends of more than 30 per cent per annum in the stock. The Wall Street Journal of July 9 carried the statement that the earnings were nearly $17 per share. This would mean that the company is earning approximately $1,000,000 a year net and would permit dividends of 25 per cent per annum. The Financial Age of July 5 had an item announcing that the company "is said to have received recently an order for the delivery of 200,000 magnetos within 30 days."

Had the property sold for even $7,500,000, $1,200,000 would be equivalent to a dividend of 16 per cent. Such a dividend ought to satisfy even the most greedy investor. From whatever angle the subject is approached, the conclusion is inevitable that the property was sold for little if any more than one-half its true value.

This result was the natural outcome of the under valuation of its assets, and the harsh and unusual terms and conditions of sale imposed by the Alien Property Custodian. It was to have been expected, and probably was expected. It was the result, not alone of putting teeth into the law, but the result of putting the administration of the law into the hands of men who thought it safe to disregard in their dealings with so-called enemy property not only the ordinary rules of fair dealing among business men generally, but also the express and specific provisions of the law itself.

The time has come for plain speech. It may not be pleasant, but the consequences of neglect of duty are quite likely to be unpleasant. The Bosch Magneto Co. with its capacity to earn $1,000,000 a year net, is in the hands of Mr. Palmer's friends. I suppose that he expects and that they expect that it will remain there. I do not know that a situation such as this was contemplated when Congress passed the trading-with-the-enemy act. I do not know whether it was intended to guard against such a situation. I can only call attention to the provisions of the law; they speak for themselves. No attempt to construe or define them is necessary.

Subdivision (e), section 7, reads as follows:

"No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this act."

I quote also from one of the concluding paragraphs of subdivision (b), section 7:

"Nothing in this act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section 10 hereof."

Under the provisions of subdivision (g), section 10:

"Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after 30 days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process in Federal courts."

The provision of section 12 of the act reads as follows:

"After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

These provisions of the original act seem reasonable and proper. In the amendment to the act which became a law by the approval of the President

on November 4, 1918, however, we find this language which seems intended to take the place of the provisions which have been quoted:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transfered, assigned, deliveed, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

Does the subject need any further elaboration or explanation? Boiled down, this is the situation as it exists: The property of the Bosch Magneto Co. has been "administered" by the Alien Property Custodian. As a result its owners have been deprived of $10,000,000 worth of assets. Those assets are now in the hands of the men who were appointed by Gen. Palmer while serving as Alien Property Custodian. The old company has been dissolved; a new corporation has been formed; the stock of the new company is found to be exceedingly valuable, and the new company is earning dividends at the rate of from $15 to $20 a share thereon. In the Treasury, or under the control of the custodian, there are $4,150.000 of the proceeds of the sale of the old company, and the owners of the old company find themselves restricted to recover only the net proceeds of the sale as their compensation for being deprived of property which prior to its seizure by the custodian was earning approximately $1,000,000 a year for its stockholders.

From the foregoing it would appear of a truth that not all of the Huns are in Germany.

The New York Evening Sun of March 7 carried as a Washington dispatch the following:

"WASHINGTON, *March* 7.

"Bradley W. Palmer, associate general counsel of the Alien Property Custodian's Office, will sail for France Saturday to act as adviser to the American Peace Mission in all matters affecting the final disposition of enemy property."

Mr. Francis P. Garvan, testifying before a congressional committee on July 15, said in response to a question of the chairman of that committee, Mr. J. Hampton Moore (speaking of Mr. Bradley W. Palmer), "he is now at the peace conference as one of the advisers there." This testimony is found in the report of the hearings before the Committee on Ways and Means at page 260 of part 3.

I now quote from the peace treaty as shown in the Congressional Record of July 10, page 2512, Section III.

"DEBTS.

"ART. 296. There shall be settled through the intervention of clearing offices to be established by each of the High Contracting Parties within three months of the notification referred to in paragraph (e) hereafter the following classes of pecuniary obligations:"

Paragraph 4 reads in part as follows:

"The proceeds of liquidation of enemy property rights, and interests mentioned in Section IV and in the annex thereto will be accounted for through the clearing offices, in the currency and at the rate of change hereinafter provided in paragraph (d), and disposed of by them under the conditions provided by the said section and annex."

I now quote from page 2514 of the Congressional Record of July 10, as follows:

"SECTION IV.—PROPERTY RIGHTS AND INTERESTS.

"ART. 297. The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this section and to the provisions of the annex hereto.

"(*b*) Subject to any contrary stipulations which may be provided for in the present treaty, the allied and associated powers reserve the right to retain and liquidate all property, rights, and interests belonging at the date of the coming into force of the present treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions, and protectorates, including territories ceded to them by the present treaty.

"The liquidation shall be carried out in accordance with the laws of the allied or associated state concerned, and the German owner shall not be able to dispose of such property, rights, or interests, nor to subject them to any charge without the consent of that state.

"(*d*) As between the allied and associated powers or their nationals on the one hand and Germany or her nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures as defined in paragraphs 1 and 3 of the annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present treaty.

"(*i*) Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights, or interests in allied or associated states."

In the annex to article 297, paragraph 1, we find the following:

"In accordance with the provisions of article 297, paragraph (d), the validity of vesting orders and of orders for the winding up of business or companies, and of any other orders, directions, decisions, or instructions of any court or any department of the Government of any of the high contracting parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights, and interests is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision, or instruction dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision, or instruction. No question shall be raised as to the regularity of a transfer of any property, rights, or interest dealt with in pursuance of any such order, direction, decision, or instruction. Every action taken with regard to any property, business, or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision, or winding up, the sale or management of property, rights, or interests, the collection or discharge of debts, the payment of costs, charges, or expenses, or any other matter whatsoever, in pursuance of orders, directions, decisions, or instructions of any court or of any department of the Government of any of the high contracting parties, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights, or interests, is confirmed.

"2. No claim or action shall be made or brought against any allied or associated power or against any person acting on behalf of or under the direction of any legal authority or department of the Government of such a power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights, or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws, or regulations of any allied or associated power.

"3. In article 297 and this annex the expression 'exceptional war measures' includes measures of all kinds, legislative, administrative, judicial, or others that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, of compulsory administration, and of sequestration, or measures which have had, or will have, as an object the seizure of, the use of, or the interference with enemy assets, for whatsoever motive, under whatsoever form, or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders, or decrees of Government departments or courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the payment of any costs, charges, or expenses, or the collecting of fees.

"Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner and without his consent, such as measures directing the sale, liquidation, or devolution of ownership in enemy property, or the canceling of titles or securities."

Paragraph (a) of article 296 reads as follows (Cong. Rec., p. 2512):

"Each of the high contracting parties shall prohibit, as from the coming into force of the present treaty, both the payment and the acceptance of pay-

ment of such debts, and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through the clearing offices."

In the annex, paragraph 3, we find the following:

"The high contracting parties will subject contraventions of paragraph (a) of article 296 to the same penalties as are at present provided by their legislation for trading with the enemy. They will similarly prohibit within their territory all legal process relating to payment of enemy debts, except in accordance with the provisions of this annex."

Under paragraph 5 of the annex, page 2513, we find the following:

"The high contracting parties will take all suitable measures to trace and punish collusion between enemy creditors and debtors. The clearing offices will communicate to one another any evidence and information which might help the discovery and punishment of such collusion."

The provisions of the treaty above quoted are intended to have one effect, and one only, the nullification of the right granted by the trading-with-the enemy act to try out in the courts of this country the questions arising out of the seizure, sale, and dissolution of enemy property and enemy corporations. Briefly, they will prevent, and are intended to prevent, any judicial review of any act of the alien property custodian. The approval of these provisions of the treaty by the Senate of the United States and the acceptance by this Government of the provisions of that article and the annex thereto will effectually confirm in the possession of the individuals now in control of the Bosch Magneto Co.'s property the right to continue in control, to continue in the operation of the property, and to continue in the enjoyment of the enormous profits which that property is capable of earning, and which, on the evidence submitted, it appears such owners are now enjoying. The confirmation of this treaty by the Senate of the United States will amount to a ratification and approval by the Alien Property Custodian of every act which he has performed. It will amount to the approval of the extortionate methods by which this stock of the Bosch Magneto Co. was acquired by the Alien Property Custodian. It will amount to an approval of the fraudulent undervaluation of the assets of that company in the balance sheet prepared by J. A. MacMartin, one of the subordinates of the Alien Property Custodian. It will amount to an approval of the violation of the rules of the Alien Property Custodian prohibiting his subordinates from becoming interested in the conduct of any business taken over and administered by the Alien Property Custodian, and it will confirm in the present owners of the stock of the new company the right to continue for all time in the receipt and possession of the enormous dividends which this company has shown its ability to earn and distribute among its stockholders.

The question is before the Senate and the responsibility for its action can not be evaded or denied. All of which is respectfully submitted.

HARVEY T. ANDREWS, *Attorney.*
MERTON E. LEWIS, *of Counsel.*

Senator DILLINGHAM. This meeting is called to give an opportunity to Mr. Willcox, who is present, to make a statement this morning; also Mr. Eugene R. Thayer, and Mr. Robert H. McCarter. I have received a telegram from Mr. McCarter, and also from Mr. Thayer indicating that they can not be present this morning, but Mr. Willcox is present.

Senator OVERMAN. I think we ought to put in the record the resolution introduced by Senator Sterling. That shows the reason for this meeting.

Senator DILLINGHAM. Very well; we will put that in the record.

(Senator Sterling read the resolution referred to, which is here printed in full, as follows:)

Moved that the chairman of the committee be requested to notify Mr. McCarter that if he so desires he may appear before the committee to testify to any facts material to this investigation not later than Saturday of the present week, and that the chairman be requested also to notify Mr. Willcox, and Mr. Thayer that if they so desire they may appear before the committee at the same time to testify to any facts material to such investigation.

Senator DILLINGHAM. Pursuant to that resolution, I sent the following telegram to each one of the three gentlemen named:

I am directed by the subcommittee of the Judiciary Committee, to whom was referred the nomination of Hon. A. Mitchell Palmer to be Attorney General of the United States, to notify you that if you so desire you may appear before such committee on Friday, August 8, at 10.30 in the morning, and testify to any facts material to the investigation.

Senator FRELINGHUYSEN. Mr. Chairman, may I make a statement to the committee?

Senator DILLINGHAM. You may.

Senator FRELINGHUYSEN. A few days ago I received a telegram from Mr. Willcox, and a letter protesting against certain statements made by Mr. Palmer regarding him in a recent hearing. I immediately communicated with Mr. Willcox, suggesting that he appear before the committee to answer any of those statements he desired, and communicated with you. It is in view of those facts that Mr. Willcox is here ready to appear.

Senator DILLINGHAM. We will hear him.

Senator FRELINGHUYSEN. Mr. Chairman, I wish simply to say that I have known Mr. Willcox for 30 years and that he is a member of one of the most influential and largest insurance firms in New York, bearing an excellent reputation, and transacting a very large business with many of the prominent and important firms and corporations in this country in fire and marine insurance.

STATEMENT OF MR. WILLIAM G. WILLCOX, OF WILLCOX, PECK & HUGHES, NEW YORK CITY.

Mr. WILLCOX. Mr. Chairman and gentlemen, let me thank you first for your courtesy in giving me an opportunity to appear here this morning. I was anxious for an opportunity to contradict some of the statements reported to have been made by Mr. Palmer in the recent testimony.

I have only within the last few minutes seen the official copy, but from the reported statements I understand that Mr. Palmer has defended the sale of the International Insurance Co. on the ground that he was afraid or suspected that the confirmation of the sale to the Chase Securities Co. would not effectually eliminate German interests, in view of the fact that a part interest was to go to me who had proven connections with German insurance interests which had fought the Alien Property Custodian's taking over their assets.

Now, gentlemen, that is a serious charge, and a charge which should not be made against a reputable American citizen without some evidence. I fully appreciate and recognize the extraordinary powers rightfully given to the Alien Property Custodian, but surely an American citizen of honorable reputation for 35 years is entitled to some rights, and should not be branded with disloyalty and with opposing the actions of the United States Government without definite evidence.

The statement is absolutely false. I have never in any way opposed the Alien Property Custodian's taking over the property of any German interests. I have opposed his taking over property held in

trust by Meinel & Wemple, which I believed, and still believe, was absolutely free from any taint of enemy ownership, and I have asked for a judicial decision of the ownership as a basis for any seizure of the property. I have always and at all times been ready to turn over any property as soon as it could be shown that there was any German ownership or interest.

Mr. Palmer, I understand, has stated that the position of Meinel & Wemple, in which I have an interest, and of which I am vice president, was similar to that of Mr. Sumner Ballard. This is quite incorrect.

Senator STERLING. Do you mean similar to the interest of Mr. Sumner Ballard in that company?

Mr. WILLCOX. Yes; and I understood that he claimed both parties were agents of the Mutzenbecher firm and represented the Mutzenbecher firm in this country.

Senator FRELINGHUYSEN. May I interrupt? That is not entirely clear. You do not mean that the interests of Sumner Ballard in the company are identical with Meinel & Wemple?

Senator STERLING. I inferred that he referred to Mr. Ballard's connection with Meinel & Wemple, and that he was charged with having an interest similar to that of Ballard in that company. That is what I thought he intended to state.

Mr. WILLCOX. My understanding was that Mr. Palmer stated that my position toward enemy interests was the same as Mr. Ballard's

Senator STERLING. Oh, yes; that it was similar to his position with regard to German interests generally, and not with regard to the company? I understand.

Senator DILLINGHAM. While we are on that, I find, on page 214 of the testimony, this statement by Gen. Palmer in reply to a question by Senator Fall:

> Yes, sir; that is exactly correct. It has been stated to me, Senator Fall, by a gentleman in the organization familiar with the insurance business, that the thing that moved the committee to that action was this, largely: Meinel & Wemple resisted when we tried to get the Mutzenbecher Co. from them. They fought Mutzenbecher's battles in court when we tried to get the property. On the other hand, Mr. Ballard surrendered the Mutzenbecher property, and they said when the war is over Mutzenbecher can open relations with Meinel & Wemple, but not with Ballard.

Mr. WILLCOX. From the very beginning of the war, in season and out of season, in public and in private, I have opposed the German interests as vigorously as possible. I have a copy here of an open letter which I wrote to Mr. William Jennings Bryan in August, 1915, strongly advocating that America should support the Allies in every possible way. That letter was published throughout this country and in Europe, and excited so much animosity in Germany that I am informed that in both Hamburg and Bremen exchanges took formal action against ever having any further connections with Willcox, Peck & Hughes.

The position of Meinel & Wemple was this: They never controlled any German insurance companies. They have for years represented two Russian companies and one French company. Prior to the war they had been subagents of the firm of H. Mutzenbecher, jr., of Hamburg.

In October, 1916, the Russian decree canceled all enemy contracts, and Meinel & Wemple were notified by Russian attorneys—they received this letter from the two Russian companies:

Consequent upon a letter passed by the Imperial Russian Government on the 29 October and 11 November, 1916, we have canceled our agency agreements with our former agents for the American business as from that date and ceased business relations with them. Under these circumstances we ask you, as our representative in the United States of North America, to take over our agency in New York. Inclosed we beg to hand you in the form of a letter the conditions under which we are prepared to intrust our agency to you and hope to hear these conditions are acceptable and receive your confirmation in due course.

Meinel & Wemple accepted the appointment in good faith, considered that all relations with Mutzenbecher were terminated, and that they were acting under their appointment from Petrograd from that time on in the representation of the Salamandra Insurance Co. and the Second Russian Insurance Co.

The new contract which they received provided for an increased commission, coupled with the obligation to perform increased services. Under the then conditions it seemed impossible for Meinel & Wemple to undertake those increased services, and they therefore did not feel justified in drawing the increased commission which the new contract called for. They continued to draw only the commission which they previously had been receiving, and put the balance of the commission in a special fund subject to adjustment with the company when communication could be opened. There never was the slightest thought or suggestion on their part or the part of the company or from any source whatever that this money so held in abeyance belonged to Mutzenbecher or that that firm had any right, title, or interest in any way, shape, or manner to those funds.

Mr. Ballard's position was quite different. The firm of Sumner Ballard & Co., of which 80 per cent was owned by the Mutzenbecher firm, were the agents of the Hamburg Insurance Co. and the Jakor Insurance Co. of Russia, and the managers of the International Insurance Co., which was owned by the Hamburg Insurance Co. Mr. Ballard was practically in partnership with the Mutzenbecher firm in the representation of these interests.

Some time after the United States had declared war with Germany the following statement was made by Mr. Ballard as the president of the International Insurance Co., in response to an inquiry from Mr. Alfred Best:

Such stock of the International Co. as was owned by Germans before the United States entered the war is now held here by myself and other American citizens, except one lot is owned by an Englishman.

In investigation it appeared that the one lot owned by an Englishman was almost the entire stock, which had been transferred to a man by the name of Lyon, without consideration and in an apparent attempt to conceal the enemy ownership.

Senator DILLINGHAM. Was that the letter written to Mr. Best?

Mr. WILLCOX. This was a statement made, I understand, by Mr. Ballard to Mr. Best, and by him published as representing the position of the International Insurance Co.

The Hamburg Insurance Co. had previously owned all of the stock of the International with the exception of qualifying shares held by directors, which shares had been subject to a call by the Hamburg Insurance Co. at an agreed price, the same price that was paid for them.

Senator STERLING. Was it shown who the German owners were of the stock that was ostensibly conveyed, without consideration, as you say, to Mr. Lyon?

Mr. WILLCOX. It was shown that the stock belonged to the Hamburg Insurance Co. There never was any question that that stock belonged to the Hamburg Insurance Co. and that Mr. Ballard, as president of the company, was representing the Hamburg Insurance Co.'s interests.

Senator STERLING. Is the Hamburg Insurance Co. entirely German?

Mr. WILLCOX. Entirely German. The International was organized in this country by the Hamburg Insurance Co. and had been owned by the Hamburg from its very incipiency.

Mr. PALMER. We took it over as German property.

Mr. WILLCOX. Yes. The Alien Property Custodian quite rightly set aside this fictitious transfer to Lyon and took over, as Mr. Palmer says, the entire stock of the International, including the directors' shares on which the Hamburg Insurance Co. had this call.

Senator WALSH. You refer to it, apparently, Mr. Willcox, solely for the purpose of showing the intimacy of relationship between Sumner Ballard and the German owners?

Mr. WILLCOX. Yes.

Mr. Ballard prior to this time had been setting aside the Mutzenbecher share of the commissions due for the management of the International Co., as well as the commissions of the Jakor business, of which Sumner Ballard & Co. had the agency. There could be no question that that was enemy property, and when the Alien Property Custodian discovered it and set aside this fictitious transfer of the stock of the International, of course, Mr. Ballard had nothing to do but surrender the stock, because there was no defense. It was obviously and admittedly enemy property.

The custodian claimed that property which Meinel & Wemple were holding was similar enemy property. As I have already stated, Meinel & Wemple did not believe, had no reason whatever to believe or suspect that there was the slightest enemy interest or taint in any of the Salamandra's property. Under the then conditions it was impossible to communicate with their head offices, but they sought for an adjudication of the ownership of the property before surrendering it to the Alien Property Custodian. Since then communications have been opened. The manager of the Second Russian Insurance Co. and the manager of the foreign department of Salamandra & Co. are both ready to testify under oath that there is no enemy ownership or interest in the property which the Alien Property Custodian has sought to seize.

Senator WALSH. What became of that fund?

Mr. WILLCOX. It was finally handed over to the Alien Property Custodian.

Senator WALSH. Upon his demand?

Mr. WILLCOX. We appealed to the Federal court, and Judge Knox, in his decision, made this statement:

With the foregoing observation and the preliminary matters disposed of, I may proceed to determine if the injunction should be continued or vacated, and also whether the bill should be dismissed for want of equity.

Before doing so, it is only fair to Messrs. Willcox, Meinel, and Wemple, who are the managing officers of Meinel & Wemple (Inc.), to say that the conclusion which I shall reach must in no wise be taken as a reflection upon the integrity, loyalty, and honor of those men, or any of them. There is absolutely nothing before me which will serve to impeach their character even remotely; indeed, from the affidavits on file the conclusion is inevitable that they are men of high probity and unquestioned loyalty and devotion to this Government, and the position they have assumed is altogether consistent with such conclusion. However, the Alien Property Custodian, having determined that the fund in question is alien owned—and even though that conclusion may be founded upon evidence which would appear to this court to be insufficient—the determination of the custodian, so long as it is not reached in bad faith, must determine the possession of the fund.

Upon that decision we handed the property over to the Alien Property Custodian.

The attorney of the Alien Property Custodian in arguing this question before Judge Knox had claimed that the proper procedure was to turn the property over to the Alien Property Custodian and bring suit for its recovery under section 9. When we attempted that, however, we were met by an injunction, claiming that section 9 only applies to innocent interests in enemy property and that as we claimed that this was not enemy property, therefore section 9 would not apply.

We are now seeking some other means to get a judicial determination of the ownership of that property. We have been in a position of trust, holding property belonging to Russian companies who, under the conditions, could not speak for themselves; companies who have been doing business in this country for many, many years, Salamandra having entered in 1899; having deposited their funds under the laws of this country and in reliance upon the protection upon which this country would afford to its legitimate assets. It was manifestly impossible for us to voluntarily surrender or admit enemy ownership in the Salamandra or the Second Russian Co. without any evidence or any reason to suspect such enemy ownership. We have merely sought to carry out our obligations to our companies in protecting their interests in asking for proof of enemy ownership before surrendering the funds.

I mention that simply to emphasize the difference in position between Meinel & Wemple and Sumner, Ballard & Co. and to support my assertion that in opposing the action of the Alien Property Custodian we have never intentionally on consciously opposed the taking over of enemy-owned property, but merely opposed the taking over of property which to the best of our knowledge and belief and conviction was not in any way tainted by enemy ownership or interest.

In an effort to convince Mr. Palmer that my statements were entitled to credence and that my loyalty to this Government was beyond question, I asked a few of my friends who had known me for many, many years to write their opinion of my character and integrity. Among others, here are letters which were written by Dr. Finley, the commissioner of education of New York State; from Raymond

B. Fosdick, of the War Department; Mr. George Foster Peabody; Mr. Alfred E. Marling, president of the New York Chamber of Commerce; Mr. Calvin D. Van Name, president of the borough of Richmond, where I have lived for 35 years; Mr. George Gordon Battle; Mr. Cornelius Elder, president of the Atlantic Mutual Insurance Co.; and Dr. Claxton, of the United States Bureau of Education. I shall not read those:

Senator DILLINGHAM. When were those written?

Mr. WILLCOX. Last December.

Senator OVERMAN. Put them in the record. I have read them all, and they are very highly commendatory.

Mr. WILLCOX. These simply say that a man that has a reputation such as is indicated by them should not be branded as disloyal to this Government without evidence.

(The letters referred to are here printed in full, as follows:)

THE UNIVERSITY OF THE STATE OF NEW YORK,
Albany, December 18, 1918.

DEAR MR. WILLCOX: This is only to advise you that I wrote to Mr. Palmer, as you suggested. With this I inclose a copy of my letter to him and his in reply.

With most cordial regard, I am,

Sincerely, yours,

JOHN T. FINLEY.

To Hon. WILLIAM G. WILLCOX,
3 South William Street, New York City.

DECEMBER 6, 1918.

MY DEAR MR. PALMER: I have a note from my friend, Mr. William G. Willcox, former president of the board of education of the city of New York, saying that he has a matter before you as Alien Property Custodian, in which you will find it necessary to appraise the value of his personal statement.

I beg to say that he is a man of the very highest integrity, as well as loyalty, and that you can give to any statement he may make the utmost confidence. I am glad to be able to give this testimony concerning one whom I have known for many years.

Sincerely, yours,

JOHN T. FINLEY.

To Hon. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

WAR DEPARTMENT,
COMMISSION ON TRAINING CAMP ACTIVITIES,
Washington, November 29, 1918.

Mr. WILLIAM G. WILLCOX,
3 South William Street, New York City.

DEAR MR. WILLCOX: I have your letter of November 26 and have been very glad to write to Mr. Palmer. I am inclosing herewith copy of my letter.

Cordially, yours,

RAYMOND B. FOSDICK, *Chairman.*

NOVEMBER 29, 1918.

Hon. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

DEAR MR. PALMER: Mr. William G. Willcox has told me that a matter has arisen in your office in connection with two Russion insurance companies in which, due to the fact that no evidence is obtainable under present conditions in Russia, the weight attached to his personal statement becomes an important factor.

Of course I am not acquainted with the matter at issue, and have no interest in it. Mr. Willcox, however, I have known for many years, and am only too

glad to indorse him as a gentleman of honor and a business man of unimpeachable integrity. He was for a number of years president of the board of education in New York, and he stands high as a citizen of the metropolis.

Very cordially, yours,

RAYMOND B. FOSDICK, *Chairman.*

[Extract from letter from Mr. George Foster Peabody.]

SARATOGA SPRINGS, N. Y., *November 29, 1918.*

DEAR MR. WILLCOX: I have had great pleasure in writing to the Hon. A. Mitchell Palmer respecting your good self. I only wish that he could have the pleasure of knowing you and of your great work in many directions, for he would be glad of the privilege I am sure.

GEORGE FOSTER PEABODY.

NOVEMBER 27, 1918.

Hon. A. MITCHELL PALMER,
Alien Property Custodian,
Sixteenth and P Streets NW., Washington, D. C.

DEAR SIR: I am writing to express to you my opinion of Mr. William G. Willcox, of No. 3 South William Street, this city. I have known him for some years, and can speak with full knowledge as to his absolute trustworthiness in all relations of life, and his undoubted loyalty to our country. His standing in the insurance business is of the very highest. He is the head of the firm of Willcox, Peck & Hughes, and enjoys, to an unusual degree, the confidence and friendship of those in the same line of business, as well as a host of other business friend and acquaintances. My own faith in him is such that I would accept, without any mental reservations, as true, any statement which he might make. I regard him as a high-minded gentleman, devoted to good works, and one in whom every confidence can be reposed.

It gives me great pleasure to bear this testimony to Mr. Willcox's character and business standing.

I remain,

Yours, faithfully,

ALFRED E. MARLING.

NEW YORK, *November 29, 1918.*

Hon. WILLIAM G. WILLCOX,
No. 3 South William Street, Manhattan.

DEAR MR. WILLCOX: Inclosed is a letter written by me to Hon. A. Mitchell Palmer, Alien Property Custodian, Washington, D. C. If it is not in the right form or if it is not strong enough let me know, because there are no terms too forceful for me to subscribe to with regard to your loyalty and integrity.

Yours, very truly,

CALVIN D. VAN NAME.

NEW YORK, *November 29, 1918.*

Hon. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

DEAR SIR: Some question may have arisen regarding the connection of Hon. William G. Willcox with two Russian insurance companies. Let me state that any representations made by Mr. Willcox should be received without the slightest doubt. He is Staten Island's most liberal philanthropist, and he is at the head of all civic movements for the advancement of our borough, and for the bettering of the condition of our people. He is a man of the highest reputation, and honorable in every way. He has been in the forefront of all of the patriotic activities of the last two years. Loyal to the utmost degree; and he has been the largest contributor to all of the war-work funds, as well as the largest purchaser of our liberty bonds.

Mr. Willcox was a former president of the board of education of the city of New York, and is the senior member of the widely known fire insurance firm of Willcox, Peck & Hughes, of New York City.

Yours, very truly,

CALVIN D. VAN NAME,
President of the Borough of Richmond.

NOVEMBER 27, 1918.

Hon. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

MY DEAR MR. PALMER: I am informed that some question has arisen with respect to the agency of two Russian insurance companies, with which agency Mr. William G. Willcox, of 3 South William Street, this city, is connected. I understand that on account of the present turbulent conditions in Russia at the present time it is most difficult to get such evidence in regard to the matter as might be desired.

I have known Mr. Willcox for many years, and have a very high regard and esteem for him. He is a man of the highest integrity and character and is eminently respected by all who know him. Personally I should regard any statement which he might make as entitled to the highest consideration and as absolutely correct in every particular. He has been highly successful in the insurance business in this city, and I have never either directly or indirectly heard a word which detracted from my very high opinion of him. I know he is absolutely loyal and entirely devoted to the Government of the United States. Furthermore, I know personally that he has taken a most active part in a very great deal of patriotic work during the past two years in this city. He is a member of the executive committee for the coordination of war work and development of community councils, a branch of the mayor's committee on national defense, of which executive committee I have the honor to be chairman.

Also, as chairman of the Salvation war work committee I have had excellent opportunity to observe the results of Mr. Willcox's efforts, which have been untiring and always for the interest of the committee.

I most heartily indorse any statement he may make and very cheerfully commend him to your most favorable consideration.

With best wishes, I am,
Faithfully, yours,

GEO. GORDON BATTLE.

ATLANTIC MUTUAL INSURANCE CO.,
New York, November 29, 1918.

WILLIAM G. WILLCOX, Esq.,
No. 3 South William Street, New York.

DEAR SIR: In response to your letter of the 26th instant we are to-day writing the Alien Property Custodian as per carbon of our letter herewith inclosed for your perusal.

If we have omitted any references which you desire us to make kindly so indicate. It is needless for us to add that we are taking great pleasure in writing the custodian.

Respectfully, yours,

CORNELIUS ELDER, *President.*

NOVEMBER 29, 1918.

Hon. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

DEAR SIR: It has been brought to our notice that possibly a word from us with respect to the standing in the community of Mr. William G. Willcox, of No. 3 South William Street, New York, might be of advantage to you in circumstances relating to that gentleman.

It affords us pleasure to advise that we have known Mr. Willcox for many years and in all of our business relations with him during a long period we have had no experience with him except such as points to the very highest character and greatest degree of probity with respect to that gentleman. He has our fullest confidence in all respects.

Respectfully yours,

CORNELIUS ELDER,
President Atlantic Mutual Insurance Co.

DEPARTMENT OF THE INTERIOR,
BUREAU OF EDUCATION,
Washington, November 28, 1918.

Hon. WILLIAM G. WILLCOX,
3 South William Street, New York City, N. Y.

MY DEAR MR. WILLCOX: I am inclosing a copy of a note which I am writing to the Hon. A. Mitchell Palmer, Alien Property Custodian.

With best wishes.

Yours, sincerely,

P. P. CLAXTON.

DEPARTMENT OF THE INTERIOR,
BUREAU OF EDUCATION,
Washington, November 30, 1918.

Hon. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

DEAR SIR: I have been informed by the Hon. William G. Willcox, of New York, that an issue has arisen with the Alien Property Custodian in which his personal statement becomes an important factor.

I take pleasure in saying that I have known Mr. Willcox for several years and am convinced that he is wholly reliable and that his statement may be accepted without question.

Yours, sincerely,

P. P. CLAXTON.

Senator STERLING. Did you know any of the advisory committee who passed upon this sale?

Mr. WILLCOX. The only one I knew well was Mr. Rush. I have known Mr. Bissell also for some years, but only slightly. I understand that neither Mr. Rush nor Mr. Bissell was at that meeting in which this matter was passed upon.

Senator STERLING. That was a meeting on the 22d of November, 1918?

Mr. WILLCOX. Yes.

Senator DILLINGHAM. Did you have a hearing before the advisory board on the 22d of November?

Mr. WILLCOX. Not before the sale was confirmed. I did have a hearing subsequently, after it was all over. I asked for an opportunity to explain my connection with the sale, but I had no opportunity to be heard at the time the sale to the Chase Securities Co. was set aside.

Senator OVERMAN. Mr. Willcox, I understand that Mr. Palmer indicated that this was quoted, that he did not make any charges against you, except what had been said, and he afterwards referred to a committee composed of these gentlemen and asked you whether they were reputable men——

Mr. WILLCOX. They are men of the highest standing.

Senator OVERMAN. You know the committee, do you?

Mr. WILLCOX. Mr. McCulloch I do not know; he is of the firm of Alexander & Green, I believe.

Senator OVERMAN. They are all gentlemen of high standing?

Mr. WILLCOX. All gentlemen of high standing. I understand that Mr. Rush and Mr. Bissell were not present at the meeting.

Senator WALSH. What members were present at the time you appeared before them, Mr. Willcox?

Mr. WILLCOX. At the time I appeared before them? When I appeared before them it was long after the sale had been confirmed.

Senator WALSH. Yes; Mr. Palmer has told us that after the sale had been confirmed and the transfer had been made it appeared that Mr. Ballard was connected with the company that took over the assets in some way, and his attention was called to that fact by you, I believe.

Mr. WILLCOX. I do not think so.

Mr. PALMER. By Mr. Thayer.

Senator WALSH. By Mr. Thayer? Well, was that the occasion that called you there?

Mr. WILLCOX. I do not now recall. I think I asked for an opportunity to be heard, because of some statements which had been made regarding myself.

Senator STERLING. Do you know when that hearing was, how long after the sale, or after the sale to the Chase Securities Corporation had been set aside?

Mr. WILLCOX. I should say that it was 10 days or two weeks, perhaps.

Senator OVERMAN. Was Mr. Bissell present at that time?

Mr. WILLCOX. Mr. Bissell was present at that time; yes, sir.

Senator OVERMAN. Was Mr. Rush present?

Mr. WILLCOX. No.

Senator WALSH. What was the matter before the committee at the time you appeared before them, Mr. Willcox, or is it your recollection that you just merely asked an opportunity to make a personal explanation?

Mr. WILLCOX. Yes; a personal explanation.

Senator DILLINGHAM. There was a meeting held on the 23d of December. Was it as late as that?

Mr. WILLCOX. It may have been. I did not appear in any effort to set aside the sale, but merely to explain my position, because naturally anyone would resent any imputation against his loyalty or his actions in connection with a matter of this kind.

Senator STERLING. Was there something of a hearing there? Were you asked questions at the time by members of the committee?

Mr. WILLCOX. Yes.

Senator WALSH. You were to have a one-seventh interest in the sale to the Chase Securities Co.?

Mr. WILLCOX. I will explain the whole matter of the International if I may. I want to explain the situation of Meinel & Wemple, and to deny as emphatically as possible that I ever opposed the Alien Property Custodian in taking over any property which I believed was enemy property. I felt we were obliged to protect property, so far as the courts would protect it, which we considered to be the property of our companies, untainted by enemy interests, and which we held practically in trust for them.

Senator WALSH. Mr. Willcox, I am not permitted to speak for the committee at all, but I am very sure that the committee did not get any such information from any testimony that was given before them. Certainly I did not. It never entered my mind that any charge had been made against you by anybody, that you having alien property in your possession, and knowing it to be alien property, had resisted the Alien Property Custodian in getting possession of that property. My recollection of what was said about the matter is that

Mr. Palmer, as he told us, did not put his action upon that ground at all, but on the ground that the Chase Co. wanted to liquidate, and he thought it was unwise, and he set the sale aside on that ground; but that the committee had reached the conclusion that the sale ought not to be confirmed by reason of your interest in it and what they thought to be your association with German interests. But so far as the possession of the property is concerned, the committee always understood that there would in many cases be perfectly bona fide controversies concerning the ownership of this property, and the charge, as I understood it, was that the Alien Property Custodian was claiming that this property in your possession was alien property, and you were contesting that claim.

Mr. WILLCOX. Right.

Senator WALSH. And that both of you presumably were acting in the most perfect good faith. That is the way the thing impressed me.

Senator STERLING. The charge is rather by way of inference, as I understand it, so far as Mr. Willcox is concerned, and so far as the company with which he had connection is concerned. It arose out of the appearance of Mr. Thayer before the committee and the questions that were asked him there. He was asked about his connection with you, and the examination developed the fact that he had gone to you to inquire about the value of the International properties, and from that conversation with you in regard to the values of the properties there is an inference on the part of the committee that it was German-owned.

Senator DILLINGHAM. I think that in order to make this matter perfectly clear the conclusion of the committee should be on the record. They held their meeting on the 22d of November, which was the day following the sale, and the resolution was this:

Resolved, That it is the sense of this committee, after an investigation of the bid of $576,500, submitted by the Chase Securities Corporation in the sale of the stock of the International Reinsurance Co., of New York, held on the 21st day of November, 1918, and after hearing the statements made in the presence of the committee by the vice president of the said Chase Securities Corporation and by an assistant cashier of the Chase National Bank, such bid be rejected upon the ground that it would appear that the ultimate disposition of said stock, if acquired by the said Chase Securities Corporation, would be to persons, some of whom had not been disclosed and others of whom had been representatives of the German interests which formerly owned and controlled said International Reinsurance Co., of New York.

Now, I think, in view of all that has been said, Mr. Willcox should be permitted to reply to the question asked by Senator Walsh.

Mr. WILLCOX. There seemed to me to be a very clear insinuation that the first reason for setting aside the sale was a doubt whether the German interests and influences would effecutally be eliminated if the sale were made to the Chase Securities Co., because of the understanding that an interest would go to me. Now, that certainly is a definite reflection upon my character and loyalty which I must protest against.

Senator WALSH. Let me call your attention, Mr. Willcox, to the fact that that is the action, not of Gen. Palmer, but of this committee up in New York. If anybody has cast any aspersions upon your character and your loyalty it is they, not he. And as I understand you, you actually appeared before the committee for the purpose of making a personal explanation?

Mr. WILLCOX. Yes.

Senator FRELINGHUYSEN. May I ask a question? Did not the final disposition of this matter rest with the Alien Property Custodian, no matter what the committee did?

Senator DILLINGHAM. I do not understand that Senator Walsh objects to his explanation of this matter.

Senator WALSH. Oh, no. I merely want to dispossess the witness of any idea that this is the declaration of Mr. Palmer, more particularly in view of the fact that when that recommendation came before him he declined to act upon it and put his action upon an entirely different ground. So as the record stands before us, this declaration has not even had the approbation of Mr. Palmer.

Mr. WILLCOX. If I am wrong in thinking that there is an reflection upon me——

Senator DILLINGHAM. Personally, as one member of the committee, I would like to have you make a statement regarding your connection with Mr. Thayer prior to the sale.

Mr. WILLCOX. I would like to make a statement in regard to the whole transaction.

Senator WALSH. I am not to be understood as objecting in the slightest to your making a full statement about this matter.

Senator OVERMAN. My understanding also is that Mr. Palmer meant no reflection upon you himself.

Senator FRELINGHUYSEN. Mr. Chairman, may I in this connection, in an effort to clarify this situation, state that the report of this committee is directly a reflection upon Mr. Willcox, in view of the fact that it intimates that he represents German interests and is unfit to become a possessor of the International Insurance Co., which, by reason of the fact that he was interested in the bid which was successful, was connected with German interests; and that in the ruling which decided that question, Mr. Palmer's committee, appointed by Mr. Palmer, the agents practically of Mr. Palmer, make or intimate that direct charge. Now, I cannot admit that that relieves Mr. Palmer of any responsibility in the matter.

Senator DILLINGHAM. We will hear you now, Mr. Willcox.

Mr. WILLCOX. I have been a director of the International Insurance Co. for a number of years. After the property was taken over by the Alien Property Custodian and when the sale was approaching I asked Mr. Ballard what his expectations were in regard to the business of the International. He replied, "Oh, the company will be bought in by my friends and I shall retain the management of it." I was a little surprised to know that the whole thing was fixed up in advance. I felt myself very strongly that to eliminate effectually the German ownership and interest the company should be liquidated and retired from business, as other German companies were being liquidated.

I mentioned to Mr. Kirkley in our office, one of the directors of Willcox, Peck & Hughes and some others perhaps, that there might be a chance to make some money in buying the International and liquidating it. I made no attempt to get up any syndicate to carry that out, but he approached the Chase National Bank, Mr. Thayer, Barber & Co., steamship people, the Liberty National Bank, and Hayden Stone & Co., with a view to bidding for this International Insurance Co. at the sale.

Senator OVERMAN. For the purpose of liquidation?

Mr. WILLCOX. For the purpose of liquidation. Mr. Thayer asked me to come to see him. I did so, and he asked me what in my opinion could be done with the company. I said it would probably be a five-year job to liquidate it, but that, barring any serious conflagration, the company ought to liquidate at a million and a half, and in my opinion it would be cheap at $700,000.

He asked me if I would like to take any interest in it. I said I would not want any large interest, because of the danger, with its enormous liability, that the company might be wiped out by any conflagration; but I was quite willing to take a 10 per cent interest if they proposed to buy it. It was afterwards, I believe, suggested that we take a one-seventh interest in the name of Willcox, Peck & Hughes, instead of my taking a 10 per cent interest personally.

Mr. Thayer thereupon authorized his representatives to bid $750,000 at the sale. Mr. Scheide, representing the Alien Property Custodian—who had been connected with reinsurance interests, and largely with enemy interests, I think, for some time—was at this sale in close conference with Mr. Ballard. I did not know, of course, what the purpose was; but after the Chase Securities Co. representatives had bid up to $576,500 the representative of the other bidders stopped and let the property be knocked down to the Chase Securities Co. for $576,500.

I saw Mr. Thayer, and he said he had been asked to meet the committee representing the Alien Property Custodian. I told him my suggestion would be that he should be absolutely frank with them, lay all the cards on the table, tell them exactly what had happened, and that as far as we were concerned—I think some question had been raised regarding the disposition of the stock. It was at my suggestion, I think, that Thayer wrote a letter to the Alien Property Custodian, in which he stated that if the sale was confirmed the Chase Securities Co. would undertake and agree not to disturb any of the stock or dispose of any of the stock without the approval of the Alien Property Custodian.

Senator DILLINGHAM. That letter is a matter of record.

Mr. WILLCOX. I told him that as far as we were concerned, I was willing to drop out if there was any question about our interests. Subsequently the question of liquidating the company arose. It was the intention of the Chase Securities Corporation and all those who had tentatively agreed to bid to liquidate the company and distribute its assets.

Senator FRELINGHUYSEN. When you say "all those who had tentatively agreed to bid," you mean those that were to take an interest in the purchase?

Mr. WILLCOX. Yes, sir; but the bid was made by the Chase Securities Corporation, the Liberty National Bank, Mr. Hayden, and Willcox, Peck & Hughes, and each tentatively agreeing that they would take a one-seventh interest if the company could be purchased for $700,000. No agreement was signed, and the Chase Securities Corporation was under no legal obligation to interest any of these parties in its purchase, but probably if the sale had gone through and the Alien Property Custodian had approved it the stock would have been distributed in that way.

When Mr. Thayer said it was the intention of the purchaser to liquidate the company that raised another question, and, as the record shows, the superintendent of insurance of the State of New York advised against liquidation of the company.

Senator FRELINGHUYSEN. Mr. Chairman, may I ask a question there?

Senator DILLINGHAM. Yes.

Senator FRELINGHUYSEN. Do you know of any other instance of liquidation of these German-owned companies where Mr. Phillips recommended similar action?

Mr. WILLCOX. I do not know of any, Senator Frelinghuysen. All the German companies doing a direct business were liquidated or are being liquidated. But I think it only fair to say of the superintendent of insurance of the State of New York and the Alien Property Custodian that it was their thought to continue those companies in business, and the Alien Property Custodian and the superintendent of insurance of New York both supported the so-called Towner bill, offered in the Legislature of the State of New York, which provided for incorporating all those German companies and continuing their plants and agency staff and good will in this country.

Senator OVERMAN. Have you seen the letter of Mr. Phillips?

Mr. WILLCOX. Yes, sir.

Senator OVERMAN. In this letter he says:

I would state that I do not consider it advisable or in the best interest of the public's insurance requirements in this country that a reinsurance company should be sold for liquidation if a satisfactory purchaser can be procured who will continue the company. In practical effect, I have heretofore given expression to this opinion in advices to the capital issues committee favoring the organization of new insurance companies.

The advisory committee of the insurance division of your office in a resolution passed unanimously has approved of the sale of a German-owned insurance company if disposed of to a loyal citizen of the United States. With this sentiment I am in full accord, but as the opportunity for indirect use of an insurance company by ceding reinsurance participation is so great I consider it inconsistent with the expressed policy of the Government to dispose of a German-owned insurance company to any party unless he frankly discloses the purposes of his purchase or if an agent of a German principal has any interest in the purchase price.

Mr. WILLCOX. Well, that would be a matter of opinion. I do not know whether there was anything gained in asking that question. Personally I did not consider the International Insurance Co. was at all an important factor in the insurance business in this country. It was tremendously overloaded, and offered very little security for its liabilities. It was a $200,000 company, doing something like $5,000,000 premium business; no one knowing anything about insurance—and Senator Frelinghuysen as an expert would know—I say, anyone who knows anything about the insurance business would know that that is not the kind of security that anyone wants to bank on very much.

Senator FRELINGHUYSEN. Its greatest value was in liquidation?

Mr. WILLCOX. Yes. It had a large reserve in point of premiums, and as those risks were terminated the equity in that reserve, which was something like 30 per cent, would be realized. And, barring any serious conflagration in the meantime, the equity in the reserve would amount to over a $1.000,000, or in the neighborhood of $1,000,000.

Senator DILLINGHAM. If I understand you, Mr. Willcox, you say you were in favor of paying more that $700,000 for this insurance company.

Mr. WILLCOX. I said it would be cheap at $700,000; yes. I looked at it as something of a speculation, because of the enormous or excessive liability of the company, and the danger that any serious fire that might occur in the course of the liquidation would wipe out the entire assets of the company. I said as far as I was personally concerned I would not care to go into it at all unless it could be bought cheap, and I thought at $700,000—I said, if it could be bought for $700,000 or $750,000 there was a chance to double one's money, provided there was no conflagration.

Senator DILLINGHAM. Has your attention been called to the statements filed in the record by Gen. Palmer, one by Joseph Froggatt and the other by Lee J. Wolfe, insurance accountants?

Mr. WILLCOX. I have not seen them; no, sir.

Senator OVERMAN. Do you know anything of their reputation as accountants?

Mr. WILLCOX. They are well-known accountants. I do not know that they are insurance experts, however. Their field and experience has been rather in the way of technical accounting.

Senator FRELINGHUYSEN. Would they be able to know of the value of an insurance company in liquidation?

Mr. WILLCOX. That is what I meant by saying I did not think they were insurance experts. I do not think their opinion in regard to the value of a company for liquidation would be of any great value.

Senator DILLINGHAM. There was one statement signed by Lee J. Wolfe?

Mr. WILLCOX. Yes; I believe that was stated a minute ago. Of course, he is a man of no particular standing in the insurance business. He is an investigator.

Senator FRELINGHUYSEN. Do you know Mr. Best?

Mr. WILLCOX. Yes, sir.

Senator FRELINGHUYSEN. Would you consider him an authority in insurance liquidation?

Mr. WILLCOX. I would say he was one of the best authorities in the business.

Senator FRELINGHUYSEN. How do you arrive at your estimate of a million and a half dollars of value probably contained in the International Insurance Co.? I want you, for the information of the committee, to explain any practices in liquidating companies and reinsuring their liabilities from their reserve, and retaining and figuring from the reinsuring a rebate on its reinsurance reserve, thereby relieving it of its liabilities and providing a surplus.

Mr. WILLCOX. I did not contemplate reinsuring this company, because I hardly thought it would be possible to reinsure it. That was one reason why I did not feel it wise to bid higher than $700,000 or $750,000, because I felt the liability would have to be run off rather than be reinsured. The practice in insurance is this: If a company writes a one-year risk for a $100 premium, we will say, and pays 27½ per cent, or 30 per cent, as the International was pay-

ing, I mean on the business, as an expense for carrying the business, they must reserve 50 per cent of the gross premium for the unexpired risk. Thereby they would get $100 premium less 30 per cent, or have a balance of $70, and when the risk was half run off they would still have a reserve of $50, or 50 per cent of the gross premium. Assuming that the losses are not more than the net premium, which woulid be a very excessive estimate, as the risk runs off the commission paid on the reserve would be released. I do not know whether you follow me or not, but the International had about $3,000,000 of reserve for unearned premiums.

Senator FRELINGHUYSEN. It had about $4,000,000, didn't it?

Mr. WILLCOX. Senator Frelinghuysen says it was nearer $4,000,000. I do not remember exactly, but the commission paid on that business has been about 30 per cent. It was a fair estimate to suppose that the losses incurred in running off that premium would not be more than 60 per cent, if you please, of those premiums, or certainly not more than 70 per cent; so that as the liability represented by that unearned premium reserve was liquidated, the profit in the reserve should be in the neighborhood of 30 per cent to 40 per cent.

Senator FRELINGHUYSEN. I see the amount I referred to is $3,200,000.

Mr. WILLCOX. Well, for the purpose of convenience, say three and one-third million dollars. I estimated a profit in running off those unearned premiums of at least $1,000,000, and it would take some years to do it, but, barring a serious conflagration, there would be a profit of about $1,000,000 in running off that liability.

Senator OVERMAN. Are you familiar with the contracts that they had?

Mr. WILLCOX. Yes, sir; fairly well.

Senator OVERMAN. I find here that Mr. Froggatt says:

I have been engaged in insurance accounting and actuary work since the year 1911, previous to which time I was in the employ of insurance companies, acting as chief accountant and subsequently secretary of one of the large English companies. During my public accountancy experience I have been called upon to make examinations of companies in order to determine the value of stock for sale or for merger purposes. At the present time I am the official examiner of the insurance department of the State of New Jersey, and have during the past few years made many examinations of companies for various insurance departments to determine the financial standing of such companies.

This man, you say, has a good reputation as an accountant for insurance companies?

Mr. WILLCOX. Yes, sir.

Senator OVERMAN. He speaks of the unusual contract that they had. Have you read this statement of his?

Mr. WILLCOX. No, sir.

Senator OVERMAN. It is to be found on page 214 of our record. I will read further from his statement:

In making a valuation of a company there must be taken into consideration the commission value in the unearned premium reserve of the company under consideration. It therefore became necessary for me to investigate the value of the unearned premium reserve of the company under consideration, and in doing this I discovered that this company secured about 75 per cent of the business from the Salamandra Insurance Co., of Petrograd, and the Jakor Insurance Co., of Moscow, being reinsurance of the business of these companies. On looking over the treaty contracts of these companies, I find that the contract is made for one-year periods, automatically renewed for further periods of one

calendar year, unless six months' notice prior to December 31 of any year is given by either party or unless otherwise agreed upon.

As no notice of discontinuance has been given on July 1, 1918, these companies would continue to code business to the International until the end of 1919, at which time the contract would be closed by six months' notice being given prior to July 1, 1919. This is an unusual contract and would have a particular bearing on the question of value of the company at the date of sale. This is particularly true because of the fact that the company's business had not been mapped or otherwise reported so as to indicate the amount of liability in the congested districts of large cities.

Now, Mr. Wilcox, I understand you to say that there was a risk, even at $700,000, in the event of a conflagration at Petrograd, Moscow, and other large cities?

Mr. WILLCOX. No; the business was an American business.

Senator OVERMAN. I understand.

Mr. WILLCOX. That simply means their reinsurance contract could not be terminated immediately or for some time to come. That has no bearing on the value of liquidation; it might rather tend to increase the value, because the company has the right to receive additional business for some time to come from the Salamandra Insurance Co., of Petrograd, and the Jakor Insurance Co., of Moscow.

Senator FRELINGHUYSEN. Isn't it true on the cancellation or termination of that business of the Jakor and Salamandra Insurance Cos., the commissions would have been released to the company and that would have created a surplus, and companies could have been found which would have paid 25 per cent to 35 per cent in assuming the remaining liability?

Mr. WILLCOX. I do not think either of those statements are quite true. I think as to the International having the right to cancel, that the risks which the International had were not subject to cancellation by the International. On the other hand, I do not believe it would have been possible to have found companies to reinsure this liability at any such profit as 25 per cent to 35 per cent by reason of the fact that all of the companies were pretty well filled up on the same risks themselves. I did not contemplate any such market for reinsurance. What I had in mind was, that the company should stop business just as soon as it could stop business; that it should run off its liabilities, get any reinsurance it could, but that it should run off its liability; and that the normal loss ratio would not exceed 60 per cent, or, at the outside, 70 per cent of the unearned premium reserve. Therefore, in running off the liability there would be a profit of from 30 per cent to 40 per cent of the reserve. It was in that way that I estimated a $1,000,000 or more of profit in the reserve, which, added to the capital and surplus of $500,000, would be about $1,500,000 of liquidating value.

Senator FRELINGHUYSEN. Did your plan contemplate taking any more risks, any new risks?

Mr. WILLCOX. No; no more risks than the company was obliged to take. My plan contemplated stopping business as soon as possible, and serving notice of cancellation as soon as possible on all business that could be canceled, and discontinuing business just as fast as it could be discontinued.

Senator WALSH. Did you say you had been a director of the International Insurance Co. of New York?

Mr. WILLCOX. Yes, sir; I was a director of the International.

Senator WALSH. For how long?

Mr. WILLCOX. From the time it was organized.

Senator WALSH. Were you one of the organizers?

Mr. WILLCOX. At the time the company was organized—no; I was not one of the organizers, but at that time Meinel & Wemple were subagents of ——— & Baker, and representing these Russian and German companies, and I was asked by ——— & Baker to go on the board as one of the directors of the International.

Senator WALSH. They were Hamburg agents, representing these Russian companies?

Mr. WILLCOX. The Mutzenbecher firm were world agents, all except Russia. Meinel & Wemple were subagents, and in 1918 that contract was canceled, and Meinel & Wemple became direct representatives in America by contract.

Senator WALSH. When the International Insurance Co. of New York was organized by the Hamburg firm you went on the board of directors at the request of the Hamburg firm, to represent the Russian houses?

Mr. WILLCOX. Yes, sir.

Senator WALSH. At about what time was that company organized?

Mr. WILLCOX. About 1910.

Senator WALSH. When did your service as director of the International terminate?

Mr. WILLCOX. When the Alien Property Custodian took over the property——

Senator WALSH (interposing). You were a director down to the time when the Alien Property Custodian took charge?

Mr. WILLCOX (continuing). I put in my resignation then, but it was not accepted, and I served for some weeks with the representatives of the Alien Property Custodian on that board.

Senator WALSH. What relation did Mr. Sumner Ballard have to the company prior to that time?

Mr. WILLCOX. He was the president of the company.

Senator WALSH. Of the International Insurance Co. of New York?

Mr. WILLCOX. Yes. And the corporation of Sumner Ballard & Co. were the managers of the International on agency contracts.

Senator STERLING. At the time of the taking over by the Alien Property Custodian of the International Insurance Co. what German interests were there in it?

Mr. WILLCOX. It was all composed of German interests.

Senator STERLING. All German interests at that time?

Mr. WILLCOX. Yes, sir; all German interests except the directors' shares.

Senator STERLING. And they were simply qualifying shares?

Mr. WILLCOX. Yes, sir.

Senator WALSH. As I understood they were simply shares to qualify the directors?

Mr. WILLCOX. Yes, sir.

Senator WALSH. You did not actually own any shares?

Mr. WILLCOX. Yes; I owned the five shares in my own right, for which I paid $125, but I had given the Hamburg Insurance Co. the right to call that stock at any time at $125 and interest, or something like that.

Senator WALSH. They had an option to purchase your stock?

Mr. WILLCOX. Yes, sir; they had an option to purchase my stock.

Senator WALSH. How many shares of stock stood in your name?

Mr. WILLCOX. Only five shares, the number necessary to qualify me as a director.

Senator WALSH. Did you actually furnish the money yourself with which to buy that stock?

Mr. WILLCOX. I actually furnished the money, and I think all the other directors actually furnished the money for their stock.

Senator WALSH. And gave the same agreement?

Mr. WILLCOX. I think the Hamburg Co. was under no obligation to repurchase this stock, but it had the right to repurchase it.

Senator WALSH. Go ahead.

Mr. WILLCOX. In regard to the advisability of liquidating the International Insurance Co., I do not know that there is any object in discussing it any further, but it does seem to me that it was manifestly unfair, and it struck all insurance interests in New York, I think, as manifestly unfair, that after the company had been put up at public auction and purchased in good faith by the Chase Securities Corporation, there should subsequently be read into the contract or to the conditions of sale an additional provision which had been announced in advance——

Senator DILLINGHAM (interposing). Namely, that it should be liquidated?

Mr. WILLCOX. Yes. And if that condition were going to be imposed upon the buyer, namely, that the company should not be liquidated, that at least it ought to have been readvertised and resold with that new condition attached; that to refuse to confirm the purchase by the Chase Securities Corporation on the ground that it was inadvisable to liquidate the company, and to give the Chase Securities Corporation no opportunity to bid on that condition was an unfair thing to the Chase Securities Corporation. While it had not been contemplated to continue the business, yet the Chase Securities Corporation, along with other large interests, had just organized the Bankers' & Shippers' Insurance Co., an American company, of which I am president, with $1,000,000 capital and a million and a half dollars surplus, and Mr. Thayer himself had suggested to me the propriety of taking over the business of the International——

Mr. FRELINGHUYSEN (interposing). There was an opportunity for reinsurance?

Mr. WILLCOX. There would have been an opportunity. And if the sale had been set aside and the property readvertised on the condition that the business should not be liquidated, it was quite possible the Bankers' & Shippers' Insurance Co. would have considered continuing the business.

Senator FRELINGHUYSEN. Isn't it true that several companies would have accepted that business at a discount; for instance, the Globe and other companies, having a tremendous surplus and perfectly capable of carrying on the business?

Mr. WILLCOX. That, of course, is hypothetical; but the point I want to make is that if the new condition was to be imposed upon the sale it was only fair to the bidders that they should have an opportunity to bid, subject to that new condition. And to set aside the

sale on the ground that it should not be liquidated and then to make a private sale, without giving the Chase Securities Corporation or any other possible bidder a chance to bid on the new condition——

Senator STERLING (interposing). With a view not to liquidate the company.

Mr. WILLCOX. Yes. If the Alien Property Custodian had decided to impose a new condition on the sale, one that had not been mentioned and perhaps had not been thought of, and make it a condition of the sale that the company should not be liquidated—then, gentlemen of the committee, I say the property should have been readvertised, with that condition known to all comers, and everybody should have been given an opportunity to bid for the property on that condition—that they should not liquidate the company, but continue its business. I think it was an unfair thing to the Chase Securities Corporation to throw out their bid on the ground that it was against public policy to liquidate the company and at the same time give them no opportunity to bid again subject to that condition.

Senator DILLINGHAM. What is your estimate of the value of that property, with a condition such as that attached?

Mr. WILLCOX. That is pretty hard to say. Theoretically it has the same value with that condition attached that it would have for liquidation. There was the equity in that business—the securities were of the highest order, and there were capital and surplus amounting to nearly half a million dollars, and equity in the reserve, which ought to be worth $1,000,000. The equity in the entire business was, I should say, worth about a million and a half dollars. If the company were to be liquidated, that equity could be realized in the course, I should say, of four or five years, and if the business were to be continued that equity would be a valuable asset for continuing the business.

Senator OVERMAN. You say that depends altogether on fires, on the amount of conflagrations?

Mr. WILLCOX. Surely.

Senator OVERMAN. It is all speculative?

Mr. WILLCOX. It is all speculative; yes. And if there were no fires there would be an equity of $3,000,000 in the reserve.

Senator FRELINGHUYSEN. Mr. Chairman, may I ask a question?

Senator DILLINGHAM. Certainly.

Senator FRELINGHUYSEN. Was Mr. Ballard president of the International Insurance Co. when it was owned by the German interests?

Mr. WILLCOX. Yes, sir.

Senator FRELINGHUYSEN. Is Mr. Ballard president of the company at the present time?

Mr. WILLCOX. So I understand.

Senator FRELINGHUYSEN. Were you present at the sale?

Mr. WILLCOX. I was.

Senator FRELINGHUYSEN. Do I understand you to say that Mr. Scheide, representing the Alien Property Custodian, was present at the sale?

Mr. WILLCOX. Yes, sir.

Senator FRELINGHUYSEN. Was Mr. Ballard present at the sale?

Mr. WILLCOX. He was.

Senator FRELINGHUYSEN. Did Mr. Ballard and Mr. Scheide—first, did you see them at the sale?

Mr. WILLCOX. I did; yes, sir.

Senator FRELINGHUYSEN. Were Mr. Ballard and Mr. Scheide in conference?

Mr. WILLCOX. I think they were.

Senator FRELINGHUYSEN. Do you believe that this was a matter of private arrangement between Mr. Scheide, representing the Alien Property Custodian, and——

Senator WALSH (interposing). I do not believe the committee would be interested in that.

Mr. WILLCOX. I would not care to answer that question anyhow.

Senator OVERMAN. Mr. Willcox wouldn't answer a question like that. If he did he wouldn't be the man to represent such interests as he does.

Senator FRELINGHUYSEN. I will withdraw the question.

Senator STERLING. What had been Mr. Scheide's connection with any German-owned company?

Mr. WILLCOX. I do not like to express any opinion adverse to Mr. Scheide. I have known him for many years——

Senator STERLING (interposing). I merely asked you to state the fact?

Mr. WILLCOX. He had been the manager of the Balkan Insurance Co., I think. He was reputed to be in quite close relations with Mr. Schreiner, the manager of the Munich Reinsurance Co., the largest German reinsurance company in this country. His relations with the insurance business, so far as I know, had been largely with German connections, and his appointment was the subject of considerable criticism.

Senator STERLING. Is he a native-born citizen of the United States, or do you know?

Mr. WILLCOX. I assume that he is. As far as I know, he is.

Senator FRELINGHUYSEN. Yes; I know that he is.

Mr. WILLCOX. I did not take any part in criticizing his appointment, and I should not wish to be understood now as casting any reflection upon Mr. Scheide's connection with this sale.

Senator DILLINGHAM. Are there any further questions on the part of the committee?

(A pause without response.)

Mr. PALMER. May I say a word, Mr. Chairman?

Senator DILLINGHAM. Certainly.

FURTHER STATEMENT BY HON. A. MITCHELL PALMER.

Mr. PALMER. Mr. Chairman, I would like to make it perfectly clear that I have never said anything or done anything or written anything which was designed or intended or constituted any reflection whatever upon the honor or the ability or the integrity or the loyalty of Mr. Willcox. And if he has gotten that impression from my testimony, I can not help but feel that it is purely a mistaken impression. On the contrary, when Mr. Willcox saw fit to have sent to me, as he says, letters from a large number of his personal friends, men of high standing, testifying to his character and his loyalty, I made

reply to each of them—possibly, Mr. Willcox, you have a copy of my reply to some of those letters?

Mr. WILLCOX. I have your reply to me.

Mr. PALMER. May I see that?

Mr. WILLCOX. Here it is.

Mr. PALMER. Have you the reply that I sent to some of your friends?

Mr. WILLCOX. I will see if I have.

Mr. PALMER. They were all in the same form.

Mr. WILLCOX. I do not believe I have any of them. I have my reply to your letter.

Mr. PALMER. I wrote Mr. Willcox as follows:

ALIEN PROPERTY CUSTODIAN,
Washington, D. C., December 4, 1918.

WILLIAM G. WILLCOX, Esq.,
3 South William Street, New York City.

DEAR SIR: I have your letter of the 2d instant, and have also received a large number of letters from your friends testifying to your character and integrity.

It was quite unnecessary for you to go to the trouble of securing this testimony. I did not intend my decision in the Meinel & Wemple matter to be any reflection upon your personal character and integrity.

Very truly, yours,

A. MITCHELL PALMER.

Mr. PALMER. Have you any other letter?

Mr. WILLCOX. This is a copy of my reply, which showed my opinion at that time.

Mr. PALMER. Would you like for me to put this in?

Mr. WILLCOX. I would like for it to be put in.

Mr. PALMER. To my letter Mr. Willcox replied, according to this copy, and I assume it to be correct, as follows:

DECEMBER 5, 1918.

Mr. A. MITCHELL PALMER,
Alien Property Custodian, Washington, D. C.

DEAR SIR: I have your letter of the 4th instant in which you say that you did not intend your decision in the Meinel & Wemple matter to be any reflection upon my personal character and integrity.

I must say that I can not follow this distinction. You assert that certain funds held by Meinel & Wemple belong to and are held on account of and for the benefit of H. Mutzenbecher, jr., of Hamburg. It is manifestly impossible that these funds should be so held by us without our knowledge. I have asserted emphatically that they do not belong to H. Mutzenbecher, jr., and are not held for their account or benefit, and it seems to me very clear that unless my statement is false your decision is wrong.

Yours, very truly, WM. G. WILLCOX.

Mr. PALMER. Have you a copy of one of my letters written to some of your friends?

Mr. WILLCOX. I am looking for one, but do not think I have one of them.

Mr. PALMER. It was along the same line, wasn't it, Mr. Willcox?

Mr. WILLCOX. Yes, sir; along the same line that you had received the testimony, and would bear it in mind in connection with the same matter.

Mr. PALMER. I think I said I shared their high judgment of you, didn't I?

Mr. WILLCOX. I do not remember that.

Mr. PALMER. Well, I am sure that I did; and if I said it, it was so.

Mr. WILLCOX. All right.

Mr. PALMER. That is quite beside the point. I want to say this, also, Mr. Chairman: This whole insurance business was treated by our organization, as well as by myself personally, with more care, and there were greater safeguards thrown around our method of operations than any other part of our work; and for the reasons that I explained the other day—that it was a highly technical business, with which I confessed I was not familiar, and I therefore proceeded slowly and with caution; and before we made demands for the property that Sumner Ballard & Co. held, which was alleged to be enemy owned, and which Meinel & Wemple held, which was alleged to be enemy owned, we made the matter the subject of an exhaustive investigation and examination by a joint committee, the committee representing the Alien Property Custodian's organization and the Treasury Department. That committee took testimony, and had a record made, and considered the matter for weeks, and I think possibly for months. I know that it dragged over a very considerable period of time, the Secretary of the Treasury appointing his representative and I appointing mine, and I think there was a third, Mr. Willcox, although I am not certain about that, but I think there was a third member of that committee.

At any rate, when that committee finally made its report, that report was that Meinel & Wemple held certain funds which belonged to the Mutzenbechers and that Ballard & Co. did also. I can not recite at this time all the details of that investigation, but I know at the time I reviewed all the record and came to the conclusion that that committee was correct and authorized the issuance of demands. But before doing that, Mr. Chairman, I gave to Mr. Willcox and his associates a full hearing, which was a proceeding I did not always indulge in, because I did not have the time to go into a full hearing with all those disputed cases; I mean, the kind of hearing that I gave this insurance matter.

Mr. Willcox and his associates, Meinel & Wemple, came before me——

Senator FRELINGHUYSEN (interposing). Here?

Mr. PALMER. Yes; here in Washington. They came before me with their counsel and presented this matter in all its aspects. They made exhaustive arguments upon the facts and upon the law. And, to further fortify my decision, I called into that conference the managing director of my organization, Mr. Davis, the vice president of the St. Louis Union Trust Co., and Mr. Cabell, the insurance attorney of our department, and Mr. Scheide, the head of our insurance division. I personally gave to that hearing the closest attention and the most careful consideration. I read the briefs of Senator Towne and his partners, which were filed, and held the matter under consideration for a considerable time. After doing so I made the decision that our original committee report was correct—that the property was enemy owned—and so announced, and proceeded upon that decision.

Now, Mr. Chairman, I may have been mistaken. I will not say I was not mistaken. I can understand how every disappointed litigant in a court of justice believes the court made a mistake. I was sitting

here as a court, to determine to whom this property belonged, and I can not see how I could have done anything else than reach an honest conclusion based upon my examination of this record.

But, even if I was mistaken, Mr. Willcox and his associates were not harmed, because if this property belongs to American citizens, of course they can get it back. The money turned over to us is as safe as if it were in Mr. Willcox's possesion; it is in the Treasury of the United States, and of course no harm can come to him or to his in that regard. He went into court with this proposition to restrain me from taking over this property. He alleged all these grounds he now alleges; he repeated all of his arguments that he made before the Alien Property Custodian; and Judge Knox, in a very interesting opinion, which the committee ought to have in full—and if they haven't got it I will see that you do get it—but I am advised that it is already in the record, at page 243. I say Judge Knox decided that the Alien Property Custodian's determination was final; that there was no intimation that it was not entered into in entire good faith, and refused to sustain the contentions of Meinel & Wemple.

Mr. Chairman, what this comes down to, as far as that phase of it is concerned, is this: That a judge who decides a case in a way that disappoints a litigant is incompetent. That is practically the charge, because this is a hearing upon the question of my fitness to be Attorney General of the United States.

I still think that I was right in that decision, but I have not the slightest doubt that Mr. Willcox believes, and in entire good faith, that I was wrong. I have never said anything to the contrary. It is just a disputed question between two persons, each acting in entire good faith, as to the ownership of certain property—the kind of dispute that the courts all over the United States are full of at all times.

Mr. Willcox and Senator Frelinghuysen insist that it was a reflection upon Mr. Willcox's loyalty that the insurance advisory committee took the action which it did; and that I, being responsible for all my agents, am, of course, responsible for that reflection. I can not admit that, Mr. Chairman. This committee was an advisory committee, consisting, as has been stated repeatedly, of some of the biggest and best insurance men in America. They came to a certain conclusion, based upon the presentation of the facts before them. The case was appealed to me, and I did not come to that conclusion; and I think it is the only case, possibly, in all our operations where I did not approve the action of one of my advisory committees.

I repeat now what I said a few days ago, and it need not go into the record again unless desired, but I call the committee's attention again to page 209, in answer to a question by Senator Dillingham about a letter that Mr. Thayer wrote saying he would sell the stock to nobody unless approved by the Alien Property Custodian [reading]:

Senator DILLINGHAM. Did you treat it as being insincere or of no consequence?

Mr. PALMER. I can not answer for them. I can only answer for myself; the action that I took personally was based upon my conference with Mr. Thayer. He told me that he bought this property to liquidate it, which was the first information I had on the subject that he ever intended such a thing. Upon my submitting that proposition to Mr. Phillips, and getting Mr. Phillips's reply, I concluded, without regard to who Mr. Thayer represented, that it ought not

to be sold for the purpose of liquidation, and he having said that was his sole purpose in buying it, I could not approve the sale to him.

Senator DILLINGHAM. I suppose you were the deciding man on that?

Mr. PALMER. Yes, sir.

Senator DILLINGHAM. Was your attention called to this letter?

Mr. PALMER. Yes, sir.

Senator DILLINGHAM. You knew of it?

Mr. PALMER. I do not know when I knew about it, but Mr. Thayer first called my attention to it, I think.

Senator STERLING. There is a second letter under date of November 21, 1918, written by Mr. Thayer to Mr. Guffy, in which he again reports that there is to be no German interest whatever in it [reading]:

"This corporation is a New York corporation, controlled entirely by American citizens, and we further want to assure you that those who may participate with us in the purchase of the stock will be American citizens and act in such participation solely for themselves, or entirely for American citizens. We shall be glad to furnish you with such other assurances or information in this connection as you may desire."

Mr. PALMER. But, gentlemen of the committee, the point I am making is that regardless of all that, regardless of who was interested in it, when Mr. Thayer told me that he bought that property entirely with a view to liquidate it, Mr. Phillips said, "I protest and hope you will not do that thing," I disapproved the sale.

Senator DILLINGHAM. What date was that?

Mr. PALMER. I can not answer that question. It was immediately after this first hearing and before any action had been taken.

Senator STERLING. Yet the statement was made awhile ago that the committee after the sale and on questioning Mr. Thayer thought his answers were disingenuous and did no disclose clearly who were to be the owners and the fear was that there might be Germans interested.

Mr. PALMER. Yes, sir; that was the committee's position. Now, Mr. Chairman, may I go on and describe what was done?

Senator DILLINGHAM. Yes.

Mr. PALMER. In due course the order came up to me, as was the practice in the office, after the advisory committee had acted, for rejection of the bid, the advice of the advisory committee being against it. The law said the bid might be rejected by the President, stating the reasons therefor in the public interest. As the order came to me in the usual routine of the office business it stated as the reason, in the public interest, for the rejection of the bid, according to this resolution of the advisory insurance committee, that German interests were involved. I personally struck that out of the order and directed that there should be inserted in its place the fact that the property was bought by the Chase Securities Corporation for the purpose of liquidation, which intention the insurance department of the State of New York considered unwise, inexpedient, and not in the interest of the country, and that I agreed in that belief; and that was the presidential order on which the sale was rejected.

There can not be any doubt about that.

Senator DILLINGHAM. Your point is that you never did confirm it?

Mr. PALMER. I did not. The record confirms my statement, that the only action the Alien Property Custodian took was in submitting to Mr. Polk, the President's representative, an order rejecting this bid and ordering a resale of the property; and I personally put into that order the reasons which I asked the President, or his representive, to give as the reason in the public interest why this sale should not be confirmed.

Senator OVERMAN. And you struck the other reason out?

Mr. PALMER. Yes, sir. If therefore the action of the committee—and I do not mean to criticize the action of the committee; that was for them—if the action of the committee was a mistake of judgment it was their mistake, but, as I viewed the situation, it was not necessary for me to go into that question at all.

There is an assertion here to the effect that in doing that I made a mistake. While I have no doubt I have made mistakes, and that may or may not be one, I assert that when the biggest insurance official in the world, the State superintendent of insurance for New York, advises in writing an officer of the Government as to what he believes to be in the public interest with respect to the sale of an insurance company, that representative of the Government would subject himself to most bitter criticism if he refused to comply with that request. I felt that his judgment was better than that of anybody else. I felt also that he was right, for I believed that it was necessary to retain as many of these media for insurance as we could retain in America without doing injury to the purposes of the trading-with-the-enemy act.

Mr. Willcox says he thinks it is fair to me to say that we tried to do the same thing with the enemy companies. That is true. This company was an American company all enemy owned, but the machinery was here to Americanize it by the simple process of selling the stock to Americans. There were, in addition to companies of this character, 18 in number, I think, branches of enemy concerns. They were not American corporations. They were operating under a license from the Treasury Department by way of liquidation, and the Secretary of the Treasury and I agreed that it would be to the interests of America's insurance business to Americanize those branches of enemy concerns, and we proposed to do it this way: We prepared a bill, my office cooperating with the Treasury Department, which we introduced into the legislature of the State of New York, providing that American insurance companies might be formed under the laws of the State of New York, which might buy all the assets of these enemy branches. We proposed to form an American company, sell all of the assets of the branch of the enemy company to that American company, and the stock was to be delivered to the Alien Property Custodian and sold to the American public. That was the plan.

Senator STERLING. That was the Towner bill?

Mr. PALMER. That was the so-called Towner bill. It received the approval of the insurance department of the State of New York, was enacted by the legislature, but immediately before it was passed or immediately after, and I think immediately afterwards, the American Insurance people protested against it. Mr. Willcox was one of them. They sent a committee to me, and we gave a full hearing on that proposition, which was participated in by Mr. Love, Assistant Secretary of the Treasury, and myself.

I was not persuaded by their argument. I believe our plan was right, and I sent my representative to Albany to urge the governor to sign the bill. He had a public hearing, and he disagreed with us, and he vetoed the bill.

But that was the nature of that effort to Americanize these enemy branches. It was argued by Mr. Willcox and his associates that we would not Americanize them but would continue them as German companies; that what I was trying to do would not result in what I hoped for. What I was trying to do was to get them in American companies and sell the stock to American people.

Mr. Willcox acted in perfect good faith about that; I have not the slightest doubt about it. He and his associates were sincere. But I insist upon the same consideration for my conduct and judgment as I accord to them. I was never interested in the insurance business, not in any way, shape, or form. I had no interest in this matter in any way, shape, or form, except a determination to Americanize all these enemy companies that I could Americanize.

When that bill failed I went to the Secretary of the Treasury and said, "Now, there is only one thing to do in order to clean out the German interests in the insurance world, and that is to promptly liquidate these branches." They had been operating, under their old managers, under a license permitting them to liquidate, but they were not being liquidated. That was the whole cause of our action—the old managers were hanging on to the business, and we wanted to clean them up. He revoked these licenses——

Senator WALSH (interposing). At that moment they were writing new insurance?

Mr. PALMER. Yes; and they were not proceeding diligently to liquidate. They were high salaried officials, and the temptation was strong to continue. I do not say that was the reason for not liquidating, but it may have been one, and the result was they were not liquidating. But these managers were in charge of the enemy branches and doubtless wanted to remain in charge and to continue as such, and I wanted to prevent that. I think the general insurance world was with me to Americanize the insurance business in the United States.

Senator DILLINGHAM. What was the effect of canceling the licenses, and who did that?

Mr. PALMER. The Secretary of the Treasury canceled the licenses. The effect was that the property in their hands became enemy property, and we issued our demand for it and put our own liquidator in, and put them all under one management and proceeded as rapidly as we could to a liquidation of those companies.

Senator STERLING. How many companies were involved?

Mr. PALMER. There were 18 or 19, and I am not certain. Can you remember as to the number, Mr. Willcox?

Mr. WILLCOX. Somewhere about that.

Senator STERLING. They were all put under one management?

Mr. PALMER. Yes; as far as liquidation was concerned. Of course, we appointed a supervisor—what did we call him—I think a supervisor and a liquidator—and we made the New York Trust Co. the liquidator so that it could handle all the funds, and the money went into that bank so that they could render an accounting. Then we named a man as supervisor to do the actual work.

Senator FRELINGHUYSEN. Mr. Chairman, may I ask a question?

Senator DILLINGHAM. Certainly.

Senator FRELINGHUYSEN. Did Mr. Phillips, the insurance commissioner of New York, protest in any way against the liquidation of those companies; did he recommend your continuing them in business?

Mr. PALMER. Oh, no. Nobody that I know of except the Germans would want those businesses continued; those were German businesses.

Senator FRELINGHUYSEN. Could not you have sold them to American interests, and could not they have continued them?

Mr. PALMER. That is exactly what I tried to do, and the insurance people of the country fought me and wouldn't let me do it.

Senator FRELINGHUYSEN. To sell them?

Mr. PALMER. To sell them to new corporations.

Senator FRELINGHUYSEN. Could not you have sold them?

Mr. PALMER. That was the liquidation, because those branches were unincorporated.

Senator FRELINGHUYSEN. In some cases you have not followed the same proceeding, and it seems to me there is a contradiction of policy.

Mr. PALMER. No; and for this reason: The International Insurance Co. was an American company but the stock was German-owned. We sold the stock. These enemy branches were not incorporated and there was no stock to be sold, nothing but assets and liabilities. When we sell the assets and liabilities we liquidate them, and that is exactly what we are trying to do—or I do not mean to say that we sell the liabilities, but that we sell the assets and pay off the liabilities and put the net balance in the Treasury. There is nothing inconsistent in that.

Senator STERLING. Were not any of these branch companies incorporated?

Mr. PALMER. No; they are mere branches, on this side of the water, of German companies. There is a manager, and an office force, and an organization, and all that—isn't that right, Mr. Willcox?

Mr. WILLCOX. Yes; that is perfectly right.

Mr. PALMER. So we could not sell them by way of liquidation. Whether we were to sell them in en bloc or singly would be a question of detail.

Senator WALSH. You mean that the purchaser of the branches could not continue the business in the name of the originol company?

Mr. PALMER. No. It would lose its identity entirely the moment we sold it. That is what we are trying to do with it; make it lose its identity. My original plan was to have 18 new American insurance companies in the United States to take the place of these 18 branches—that was my original plan—to be owned by American people, Americans who would become the owners of these 18 branches——

Mr. WILLCOX (interposing). But that would not work.

Mr. PALMER. No. But we thrashed that out in detail, Mr. Willcox. You felt that I was wrong, and I thought I was right.

Mr. WILLCOX. We thought it would naturally serve to perpetuate the plant and good will of the German companies in America, and that the good will of the German companies would be tainted and at a disadvantage to any purely American interests, and that after the companies were organized the stock would inevitably fall into German hands.

Mr. PALMER. My answer was I would see it got into American hands.

Mr. WILLCOX. But you could not see that it stayed there. That is all right, but it won't work out.

Mr. PALMER. Well, we would work that out with great care. At any rate, that is water that has gone over the wheel, and I only recite that as a part of the history of this matter.

Now, Mr. Chairman, gentlemen argue that I did wrong in selling this property at a private sale—but let me add this one thought while I remember it: This so-called reflection upon Mr. Willcox, I am certain, would never have gotten into the record anywhere if Mr. Thayer had told the insurance advisory committee when he first went before them that he proposed to liquidate the International. He did not tell them that. They asked him all about his plans; what he was going to do, and all that sort of thing, but he never once mentioned liquidation. It was not until he came down to see me, after that meeting was held, that he talked about liquidation. I asked him, "Why didn't you tell the committee that you were going to liquidate this property?" I thought in a moment that would place a very different color upon the participation of any gentleman in it, if they were going to clean it out. Mr. Thayer replied that the committee did not ask him anything about liquidation. I am satisfied that Mr. Phillips' views upon the question would have been made clear at the beginning, that they were not going to sell the property to the Chase Securities Corporation if that corporation were going to liquidate the International.

But at any rate when Mr. Thayer told me he bought it for liquidation purposes only I submitted the question to Mr. Phillips, and on Mr. Phillips' judgment, in which I concurred, I took the action I did. I prepared the order which was submitted to Mr. Polk, and which was signed by him, not only rejecting this bid but selling the property at private sale to the other bidder. And now that is attacked on the ground that I ought to have resold it and attached this condition that it could not be liquidated. I did not attach any such condition in advance for the very splendid reason, in my view, that every such condition attached to a sale in advance affects the price, the price we were trying to get, and, of course, we were trying to get the best price we could for all these properties. Furthermore, we reserved to ourselves the right to determine afterwards whether a purchaser should have the property. If I had notified these gentlemen that they could not bid on the property if they were going to liquidate, and that they had to proceed on the idea that they would not liquidate, I would have had only one bidder. The general policy was to control all these matters through the insurance advisory committee, and to get the best possible bid at a sale.

The reason I sold the property at private sale to Crum & Forster was because I was advised by our insurance people, and by the insurance advisory committee, that under the circumstances there could only be two bidders for this property, and they were Meinel & Wemple and Sumner, Ballard & Co.; that they had the experience and former affiliation and knowledge of this game, which made them the only bidders in the market. And I assumed that when the two concerns, anxious to get the property, bid up to a certain figure, in earnest, good faith competition, that that was pretty good evidence of the value of the property, especially since my insurance expert further said that the property was not worth as a going concern the $570,000 they had bid for it.

Mr. Willcox submitted his views upon the value of the property at the hearing he talks about, to this entire committee. I think every member of the committee was present at the hearing, and Mr. Willcox was present, and I was there myself and heard it. When he said this property was worth a million and a half dollars net, I think it is not stating it too strongly to say that the committee laughed at the proposition. They certainly took strong issue with that statement—and those men, as Mr. Willcox says, have no superiors in skill and ability and integrity in the insurance world of the United States. And when those five men on that insurance committe disagreed with Mr. Willcox as to the value of the property, and agreed that $570,000 was more than it was really worth, I felt that I was entirely justified in having sold it at private sale to the next highest bidder and at the price that Mr. Willcox himself finally bid for it at the sale. I do not know that I have anything more to say as far as the International Insurance Co. of New York is concerned.

I have mentioned Mr. Scheide before in the hearing; but since his name has come up let me say this further thing: When I began to organize the Alien Property Custodian's office I was looking for men who had had experience and ability and who possessed ability along these lines. A member of the Civil Service Commission first called my attention to Mr. Scheide. I was bound by the law which the Congress had passed to take all my appointments from the list of eligibles furnished by the Civil Service Commission. It is true that there was a rule in effect during the war which made it possible for the Civil Service Commission to make a pretty quick order putting through examinations and certifying names in case of emergency—so that I could appoint, with their approval, certain persons. The fact that Mr. Scheide was recommended to me by a member of the Civil Service Commission was very persuasive to my mind. I sent for him. I think it takes only a single conference with Mr. Scheide to see that he knows the insurance business, and more especially this international insurance business. I made inquiry of persons that I knew in Connecticut, where he had been in business, as to his standing, ability, and character. I received the most flattering replies about him, and I engaged him. He was not a candidate for the place. He accepted with great hesitancy, but he finally was persuaded—and I think that is the proper word to use—he was finally persuaded by me to take the place.

After Mr. Scheide was appointed I woke up to the fact that there was a row on in the insurance world about it, because Mr. Scheide was a member of a partnership or a stockholder in a corporation, one or the other, in Hartford, Conn., which had been the agent of the Balkan Reinsurance Co., which is an Austrian concern, I think, either Austrian or German. Which was it, Mr. Willcox?

Mr. WILLCOX. Austrian, I think.

Mr. PALMER. Yes; it was Austrian, I think. But with which firm he had had no relation since the war, and some months before I employed him he had gone out of the corporation entirely; had severed his entire connection with it. But these insurance gentlemen around the country were at work—and they spread all over the country, as you know—and they wrote me the most vicious things about Mr. Scheide. I thought to myself if they were true I had certainly made

a stupid blunder. They told me that Mr. Scheide was pro-German, that he was a German subject. I have letters, lots of them, up in the office, saying he was born in Germany, and some saying I ought certainly to put an American citizen in charge of this business, and all that sort of thing.

Well, to make a long story short, I will say to this committee, I made some investigations, and I found that Mr. Scheide was born in America; that his father was born in America, his mother was born in America, his grandfather and grandmother on both sides were born in America, and had lived up in Connecticut somewhere during their lives. I found, further, that before the United States entered the war a minor son, under 21 years of age, whose actions Scheide could control, had gone to France, and was fighting for France. Well, gentlemen of the committee, that disposed of the allegation that Mr. Scheide was pro-German, at least to my mind.

Then I wrote to all those gentlemen—and Mr. Willcox says he was not one of the gentlemen who protested.

Mr. WILLCOX. You got no protest from me as to Scheide.

Mr. PALMER. Well, I wrote to all of them, and I stated: "If you have any charges to make against Mr. Scheide, I will be pleased to hear them." I fixed a date when I was ready to hear them, and invited them to come, but not a single man came. I told them I would be very glad to hear them singly or all together, and I wanted them to come forward and prove their charges against this American citizen, but I did not get a one of them to come; no one would come. I stood by Mr. Scheide in the fight—and it was a fight—and he was charged, in my judgment, without any reason of any kind or character, with things which were not true and which could not be proved.

And in this connection, Mr. Chairman, I want to say that Mr. Scheide's record in that office from that time to this has been a most splendid refutation of any charge or intimation against his Americanism, his loyalty, his capacity. He has done a splendid piece of work, and has been one of the strongest men of the whole organization. In the plan of de-Germanizing these companies he was well equipped to render valuable service and did render most valuable service. His knowledge of Prussian life insurance and fire insurance, and their methods generally, helped him very much in his work here. You can see what his attitude was. Once he went into the Alien Property Custodian's office, and began cleaning up this concern, his head was cut off over there, and he could never again have had any relations over there.

I want to say that I do not feel I could have done this business without Mr. Scheide, or at least somebody else who had been in the insurance business and knew it from the ground up, and knew this particular phase of it. He knew Ballard and all those people as well as anybody, I mean as well as anybody I could possibly have found or put on this job. I can not too strongly defend both his conduct and his character.

Now, Mr. Chairman, I can not discuss in the technical manner that Mr. Willcox did the question of the values of these properties, or anything of that sort, but I feel like this: That if you have any doubt about the action of the advisory committee, the members of the ad-

visory committee ought to be called here and let them say what their action was, and why it was taken, and what their ideas of the value of this property may be—although I repeat that it was not their action but my action, and so far as my action is concerned I accept full responsibility for it.

Senator FRELINGHUYSEN. May I ask a question, Mr. Chairman?

Senator DILLINGHAM. Certainly.

Senator FRELINGHUYSEN. I understand that the reason for the nullification of the sale to the Chase Securities Corporation was due to the fact that they intended to liquidate the company and you had been advised by Mr. Phillips, the superintendent of insurance of the State of New York, that that was against the public interest?

Mr. PALMER. Yes, sir.

Senator FRELINGHUYSEN. And that was not the reason the committee gave, but that there was an undisclosed principal, or that there was a disclosed principal who had German connections; that that was the reason?

Mr. PALMER. I did not pass upon that order at all. I prepared the order that was signed by Mr. Polk.

Senator FRELINGHUYSEN. The Chase Securities Corporation offered, if you would sell it to that company, to buy it subject to your approval as to whom they would sell the stock to, or the company?

Mr. PALMER. Yes, sir; and that was before they said they were going to liquidate.

Senator FRELINGHUYSEN. You gave as a reason why you did not put it up for sale again that it might affect the price?

Mr. PALMER. I said that my advisors insisted that the price it had brought at the first sale was really more than it was worth as a going proposition.

Senator FRELINGHUYSEN. You felt if you readvertised it, it might affect the price? That was your statement, as I understood it.

Mr. PALMER. That is about the same thing, Senator Frelinghuysen. This committee thought it had brought more than it was worth and did not want to chance it again.

Senator FRELINGHUYSEN. At that time your committee over there—and I presume you have the testimony?

Mr. PALMER. It was stated by the representative of the Chase Securities Corporation.

Senator FRELINGHUYSEN. He contended still that they were prepared to bid $700,000 for the property. Now, if you had ordered a resale wouldn't you have obtained $700,000 from the Chase Securities Corporation?

Mr. PALMER. It might, if they thought it was worth that, not having permission to liquidate the property.

Senator FRELINGHUYSEN. I know; but they offered not to sell it except on your approval and not to liquidate it, as I understand, and leave the matter of adjustment to your disposal. Isn't that a fact, Mr. Willcox?

Mr. WILLCOX. No; not that. The proposition was not to sell the stock to anybody except that Mr. Palmer approved.

Mr. PALMER. Yes, sir; they never offered not to liquidate it.

Senator FRELINGHUYSEN. Were not many of them willing to continue the company and pay $700,000, which they had bid?

Mr. PALMER. No; Mr. Thayer was so positive that he was not going to do anything with it but liquidate that it was unnecessary to consult him again about it.

Senator FRELINGHUYSEN. I understood Mr. Willcox to state that they were prepared to pay $700,000, and that they also contemplated in their disposal of the company that they might continue to run it.

Mr. WILLCOX. No; I didn't say that. I said if they had had an opportunity to bid on it that they need not have liquidated it; that they were in a position to have continued the business through the medium of the Bankers & Shippers' Insurance Co.

Senator FRELINGHUYSEN. That is the way I understood it.

Mr. PALMER. Mr. Willcox, you were asked at one of those hearings whether the Bankers & Shippers' Insurance Co. had any plan to take it over and you said no.

Mr. WILLCOX. Yes; but I said that we were in a position to have done so if they had had an opportunity to bid.

Mr. PALMER. Well, that is the whole story.

Senator FRELINGHUYSEN. You would have been prepared, if you had acquired that property for $700,000, to have run it and continued it, wouldn't you, Mr. Willcox?

Mr. WILLCOX. I wouldn't say that I would. I do not know now.

Mr. PALMER. Well, if Mr. Willcox could not say, certainly I would not be able to say.

Mr. WILLCOX. I simply say this, that if there was to be a new condition added it ought to have been put up and readvertised and resold.

Senator FRELINGHUYSEN. I think the evidence shows that the Chase Securities Corporation was prepared to pay $700,000 for this property, and if an effort had been made to urge them to continue the company, when purchased at that price, or anyone to continue it, they would have done it.

Mr. PALMER. I have never yet gotten them to say that.

Now, Mr. Chairman, I would like to present a statement in answer to some things that were contained in the brief filed by Mr. Andrews and Mr. Lewis at the last hearing in reference to the Bosch Magneto Co. I will not take up the time of the committee to read it, but hope it may go into the record along with the report of Harris, Allen & Co. and other data which appears here.

You will remember that the question was raised at that time about the $1,000,000 claim that the Bosch Magneto Co. had against Robert Bosch, and the allegation was made that since that claim could have been collected out of the funds of the Alien Property Custodian, thereby the purchasers got this property for $2,000,000 less than it was worth. An explanation of that is contained in these papers.

The accountants' figures are given, and full explanation, together with letter showing they charged amounts off because they were not collectible under the circumstances, and that they had no idea or intention of ever trying to collect it.

At the last meeting of your committee I requested permission to file for its information a reply to the brief filed by Messrs. Andrews and Lewis. Further consideration of this document leads to the conclusion that it neither deserves nor requires a formal brief in reply. It is, however, so filled with innuendos and with incomplete or inac-

curate statements of the facts involved, that I desire to file the following statement:

The subsance of the complaint respecting the Bosch Magneto sale is that it was not fairly conducted, the charge being made by innuendo, rather than by direct statements, that the value of the properties was misrepresented or concealed, in order that the persons who became the purchasers might have an undue advantage at the sale. Reference is made to certain audits and to the "Prospectus" whcih was distributed.

By reference to the plan for the sales organization which has been submitted to your committee, you will see that both audits of the books, and appraisals of the physical assets, of each corporation whose stock was to be sold were contemplated as essential steps in the preparation for each sale. Pursuant to this plan an audit of the books and accounts of the Bosch Magneto Co. for the period from July 1, 1911, to April 30, 1918, was prepared by Harris, Allan & Co., chartered accountants, of New York City. In addition to this an appraisal of the physical assets of the corporation was made by Manufacturers' Appraisal Co. Copies of this audit and appraisal were submitted to the directors and officers of the corporation, including counsel, in order that any matters unsettled or unliquidated or which in any way might interfere with the sale should have proper attention prior to the time of sale.

Consideration of this audit of April 30 disclosed, among other things, that the corporation was carrying on its books as an indebtedness owing to it by Robert Bosch an item of $1,048,029.07. It developed that this item did not in fact represent an obligation owing by Bosch to the corporation.

Bosch was substantially the owner of this company, and this account between him and the corporation appears simply to have represented contributions by him to the capital stock of the company and distributions to him of profits earned. It is not difficult to surmise the reasons which may have induced this method of concealing the fact that large profits were being distributed by the company to the man who owned its capital stock; but, whatever the reasons may have been, the result, of course, is that this item did not represent an amount which could be collected by the corporation from Bosch. The exact figures showing that although the net income from July 1, 1911, to April 30, 1918, was over $9,000,000, only $25,000 was distributed as dividends, are eloquent on this subject; and I quote herewith a condensed tabulation from the Harris, Allan & Co. report, page 32, title "Disposition of earnings":

Increase of assets	$6,371,660.41
Decrease of liabilities	356,192.52
Net change in real accounts	6,727,852.93
Surplus transferred to "Loan account"	557,500.00
Surplus transferred to "Foreign representatives, account"	1,304,813.87
Dividends declared	25,000.00
Good will and patent rights of Rushmore Dynamo Works charged off	444,539.86
Patent rights to Goodson impulse starter charged off	2,499.00
Total net income for period from July 1, 1911, to Apr. 30, 1918	9,062,205.66

It is apparent from the above that the balance sheet as it appeared upon the books of the company on April 30, 1918, particularly with respect to this Robert Bosch item, was not a correct statement of the true value of the assets. If this item, in fact, had represented a valid obligation the net worth of the corporation for the purpose of sale would have been enhanced by the amount of the claim, as it would have been collectible from the proceeds from the sale held by the custodian, as Mr. Lewis points out; if, however, this item were eliminated from the sale the selling price would be less, but the net amount remaining in the Treasury of the United States as the proceeds from the sale should be the same. Obviously the common-sense proposition was to eliminate this item entirely from the sale, particularly in view of the fact that all the available evidence indicated that it did not represent a collectible account. This, in fact, was done. The item was written off from the books of the corporation by a vote of the directors; and the sale was had on bids received upon the strength of this cancellation.

Other items appearing in the audit were considered to be overvalued, and entries proper to bring the books of the corporation into accord with what were considered to be the facts were made. Harris, Allan & Co., were then requested to continue their audits from April 30, 1918, to September 30, 1918, and they prepared and submitted, under date of October 16, 1918, what is called a "Comparative balance sheet," as of April 30, 1918, and September 30, 1918, bringing their audit more nearly down to the date of sale.

The plan of advertising contemplated the insertion of brief notices in newspapers and trade journals and a more extensive advertising document called the "Prospectus." This prospectus, it should be noted, was prepared for the purpose of interesting possible purchasers, and not for the purpose of submitting to them complete data upon which they should base their bids. The original audit of Harris, Allan & Co. to April 30, and their comparative balance sheet bringing this down to September 30 together with the appraisal were all on file in the office of the director, Bureau of Sales, in New York City. The prospectus itself called attention to this fact. I quote therefrom the following:

"APPRAISALS AND AUDITS.

"The Manufacturers Appraisal Co. has recently completed an appraisal of all of the property of the company. Messrs. Harris, Allan & Co., and J. A. MacMartin, certified public accountants, have examined and audited the company's books and prepared financial statements as of April 30, 1918, and October 1, 1918. Copies of the reports of appraisals and audits are on file with the director, Bureau of Sales, and will be exhibited on request. Summaries of the appraisals, a copy of the balance sheet as of September 30, 1918, and a five-year comparative statement of the gross sales and the net profits are published herein.

"This prospectus is made from the best data available, and is believed to be in all respects accurate, but purchasers must rely on their own inspection, examination, and investigation." * * *

So much has been said, however, about the difference between the financial statement as shown in the prospectus, and as shown by the Harris-Allan statement of April 30, that I have had a representative of the firm of Haskins & Sells, certified public accountants, of New York City, check over these statements and make a report upon the same. Such an examination was made, and I inclose you a report made by Mr. A. W. Anthony, of that firm. You will notice he says the assets should have been reduced to the sum of $5,410,311.70.

As I stated before, however, this, as it seems to me, is not a material matter, because the real facts were submitted to the prospective purchasers and they had an opportunity to, and certainly did, place their own valuation upon all these assets.

So far as the stock of Eisemann Magneto Co. is concerned, what has been said disposes of the charges that have been made. This stock was turned over to the Alien Property Custodian as the property of Robert Bosch, an enemy, and not as the property of the Bosch Magneto Co., an American corporation. Delivery of the stock to the custodian was made by voluntary petition under section 7-d of the act, executed by Otto Heins, on May 13, 1918, and accepted by the custodian on May 17, 1918. Harris, Allan & Co. reported this stock as belonging in fact to the Bosch Magneto Co. The original certificates, however, had been canceled and the stock actually was standing of record in the name of the Alien Property Custodian when the sale was made. The prospectus very properly, therefore, called attention to the fact that this stock, although listed as an asset of the corporation, was not, in fact, in its possession; and this item, therefore, simply represented a right of action against the Alien Property Custodian to be determined judicially as provided by section 9 of the trading-with-the-enemy act.

Any charge that any person really interested in the purchase of these properties could have been misled in any respect is absolutely without foundation. The audits which were on file showed clearly that on April 30 the surplus, according to the books, amounted to a little over $8,000,000, and that thereafter items were reduced and written off (including the Robert Bosch item) to the amount of approximately $3,000,000. Any change of this amount set out as it was in these audits could not escape even casual examination; and thereafter the original records of the company and whatever information its officials and the employees and agents of the Alien Property Cus-

todian had was subject to the call of such bidders. The innuendo that there was a willful concealment from prospective purchasers of this Robert Bosch account or any other item is a malicious fabrication. This sale, as has been shown, was widely and extensively advertised; complete appraisals and audits were on file in the office of the director, Bureau of Sales, and the original books and records of the corporation were open to persons who had sufficiently exhibited their interest and good faith in the proposed sale to qualify as provided in the terms of sale.

To this committee, as well as to all other persons familiar with such transactions, it is at once apparent that any purchaser of a plant estimated to be worth in the neighborhood of $5,000,000 would make his own examination of the physical properties and have the books checked by his own auditors; and would place his own valuations upon the properties offered for sale; and in this, as in fact practically every other sale made by the custodian, this was in fact done.

The Bosch Magneto Co. and the business done by this corporation were well known to the American automobile trade and the American business world; and the fact that after such extensive advertising as was made in this case the property brought only the sum of $4,150,000 is pretty conclusive evidence that it was not considered to be worth any more.

The other charges with reference to this sale deserve only passing notice. The terms of the sale are characterized as "harsh and unreasonable." These terms were adopted after careful consideration, with the approval of the advisory committee on sales, and these terms in substantially all essential particulars have been followed in all sales made by the custodian. So far as patents are concerned, the note that they would be sold subject to the rights, if any, of the Bosch Magneto Co., a New York corporation, was necessary and proper for legal accuracy, but could have had no effect upon any purchasers. The whole of this stock was included in the same sale, and it would be immaterial to the purchaser whether the corporation owned the patents or whether he secured title thereto as the purchaser at this sale. This is a legal detail of interest only to lawyers.

The sum of $100,000 required as a deposit to qualify bidders is certainly not out of proportion to the value of the property as represented either by the purchase price or the audit; and in proportion to the values involved is below the average required in these sales. It might be well to add here that deposits from prospective bidders were required in all cases as a guaranty that bids made would be complied with and that persons desiring to inspect the properties sold were acting in good faith and were not mere curiosity seekers or business rivals endeavoring to secure information for future competiton.

The argument that bidders interested in a transaction of this magnitude would be deterred from bidding by hardship and expense of a trip to the plant at Chicopee, just outside of Springfield, Mass., is in line with the other charges made, and needs no answer.

The facts with reference to this sale in brief are: (1) That it was widely advertised; (2) that complete information was accessible to all persons interested and was in fact availed of by them; (3) that the property was fairly and regularly sold at public outcry as required by the terms of the trading-with-the-enemy act; (4) that nothing has been brought forward to indicate either, that it did not bring within a reasonable degree of its full value, or that there was any reason for believing at the time the sale was confirmed that a larger sum could have been secured by a resale at a later date.

I believe this is enough on this matter.

With reference to another matter discussed, to wit, the proper interpretation to be placed upon the trading-with-the-enemy act, I inclose you copy of another opinion sustaining the legal contentions for the assertion of which I have been so vigorously assailed by learned counsel representing the German interests. This opinion was handed down by Judge Hand subsequent to the last hearing, and for this reason was not included in the list then submitted.

I send you herewith for your information the following:

1. Report by Mr. Anthony, of Haskins & Sells, above referred to, with copy of the minutes of meeting of the directors of Bosch Magneto Co., on October 17, 1918, and letter from the American Bosch Magneto Corporation with respect to the Robert Bosch item.

2. Harris, Allan & Co., audit to April 30, 1918.

3. Harris, Allan & Co., comparative balance sheet, under date of October 16, 1918.
4. Copy of prospectus in the Bosch Magneto Co. sale.
5. Copy of opinion of Judge Hand referred to.

When these Harris, Allan & Co. reports have served your purpose, will you kindly notify me so that I may return them to the files in the Office of the Alien Property Custodian?

NEW YORK, N. Y., *July 31, 1919.*

Mr. FRANCIS P. GARVAN,
Alien Property Custodian, Washington, D. C.

SIR: Pursuant to your orders I have examined the books of the Bosch Magneto Co., kept at their plant, Springfield, Mass., also the files relating to the preparation for sale and the sale of the aforesaid company, now on file in the Office of the Alien Property Custodian in Washington, with a view to determining the value of the assets of the company at the time of the sale conducted by your office December 7, 1918.

The entire net assets of the company, as shown by their books and reflected in a statement prepared by Harris, Allan & Co., 347 Madison, New York, amounted to $8,587,457.61, against which there were further contingent liabilities of $127,800, leaving a total of available assets of $8,459,657.61.

The cash assets have been accepted, without verification, as correct. In an investigation of the accounts receivable, however, out of a total of $476,003.91 there was written off for depreciation only $2,500, a percentage of about one-half of 1 per cent. This is remarkably conservative, and while I suggest no change, I call attention to it to emphasize the fact that a prospective buyer probably formed his own conclusions and adjusted his bid accordingly.

The inventory, as shown in the April 30, 1918, balance sheets, amounts to $3,274,174.49. There was afterwards written off for depreciation the sum of $424,693.01, reducing this asset to $2,849,481.48, which represents the inventory as shown in the Alien Property Custodian's published prospectus. In the opinion of the Bosch Magneto Co.'s stock manager and other employees familiar with the value of the inventory this depreciation was entirely inadequate, as the stock at no time would have averaged more than 70 cents on the dollar. The sum set up for depreciation should therefore have been increased to about $982,250, or a further reduction in assets of about $557,000. The stock in question consisted largely of parts which were obsolete, although carried on the books at cost. As the plant was thoroughly inspected by all interested prospective buyers, who, accompanied by their expert advisers, were well aware of this condition. This knowledge undoubtedly influenced their bidding.

There is also a difference between the figures carried on the books for plant equipment and the figures submitted by the Manufacturers' Appraisal Co., due to the fact that the Appraisal Co.'s figures included a valuation on blue prints, tracings, and other property of absolutely no salable value, and which have been written off on the company's books as worthless. Nevertheless it was included in the physical appraisal at a valuation of several hundred thousand dollars.

An item which appeared on the books of the Bosch Magneto Co. prior to its seizure by the Alien Property Custodian was a balance of $1,048,029.09 due the American company by Robert Bosch, of Stuttgart, Germany, in conjunction with other items amounting to $2,639.34, making a total of $1,050,668.43, which was, by order of the general manager, May, 1918, charged against "Surplus" account and a new account created, called "Special reserve," to which "Special reserve" this item, in conjunction with others, was transferred. This action was ratified at a meeting of the board of directors held on Thursday, July 11, at 120 Broadway, New York City, at 10.30 a. m., there being present Directors Messrs. Bower, Fitzpatrick, Hutchinson; there were also present George A. MacDonald and Henry J. Fuller, nominees to the board, in advisory capacity, and Mr. Arthur T. Murray, general manager. The minutes of this meeting were signed by Mr. Fitzpatrick as secretary.

As of September 30, 1918, an account was opened known as "Enemy alien account," and the claim of $1,048,029.07 against Robert Bosch, of Stuttgart, in conjunction with other claims against enemy aliens amounting to $2,639.34, were transferred to this account, making $1,050,668.41. On the same date an entry was made charging "Special reserve account" and crediting "Enemy

alien account" with $1,050,667.41, leaving an asset balance of $1 on this account, as per the books of that date, and which was carried in the report under "Accounts receivable."

At a meeting of the board of directors held October 17, 1918, at 4 p. m., at the office of the president, 120 Broadway, Directors Messrs. Bower, Fuller, Hutchinson, and Fitzpatrick being present, it was "resolved that the company's auditor and head bookkeeper be, and hereby is, authorized to make entries in the books of the company in the manner of the following," in which is embodied the two preceding entries. The auditor was instructed that these entries were to be made as of September 30, 1918.

I attach copy of the minutes of the directors' meeting. This item did not, in the opinion of the Bosch Magneto Co., constitute an asset, as the cash remittances which made it up were sent to Robert Bosch in lieu of dividends. See attached statement from A. T. Murray, president of the American Bosch Co., renouncing all claim to this item.

There appears also on the balance sheet as of April 30, 1918, an item of $411,810.40, due by the Reading Standard Co. This item, the officials of the American Bosch Co. say, is not collectible and they have written it off of their books. There also appears on the books of the company as an asset, $468,283.19, due by Otto Heins. As this amount was seized by the Alien Property Custodian, it was very properly written off, and does not appear in the prospectus. In addition, the balance sheet as of April 30, 1918, included "Accounts receivable" amounting to the sum of $218.790, subsequently liquidated for $81,790.

It appears therefore that, although the books of the Bosch Maneto Co. as of April 30, 1918, show assets of $8,459,657.61, if the proper depreciation had been made, the true value of the assets as shown by later developments would have been $5,410,311.70, a reduction of $3,049,345.91 made us as follows:

Reduction in inventory	$982,252.34
Robert Bosch account	1,050,000.00
Otto Heins	468,283.17
Reading Standard Co	411,810.40
Accounts receivable, loss in liquidation	137,000.00

Respectfully, yours,

A. W. ANTHONY.

A special meeting of directors of the Bosch Magneto Co. was held at the office of the president, 120 Broadway, New York City, on Thursday, the 17th day of October, 1918, at 4 p. m.

Present: Directors Bower, Fuller, MacDonald, Hutchinson, and Fitzpatrick.

The minutes of the meeting of October 10 not having been extended, the reading of same was passed.

The president explained that the purpose of the meeting was to authorize the making of certain entries in the book in connection with accounts now carried to the charge of the Alien Property Custodian, Robert Bosch and certain other alien enemies; also to the charge or for account of investment in stock in Reading Standard Co., Boonton Rubber Manufacturing Co., and St. Louis Car Co.

Thereupon, the following resolution was offered and unanimously adopted:

Resolved, That the company's auditor and head bookkeeper be, and he is hereby, authorized to make entries in the books of the company in the manner following:

* * * * * * *

2. Enemy alien accounts received		$1,048,029.07
To Robert Bosch:		
Sundry accounts received—		
Ensinger	1,010.05	
H. Bosch	471.85	
E. Schmerer	118.94	
R. Lindenhann	825.50	
Springfield banking (amount due by Wilde carried on factory books)	213.00	
To transfer above accounts to form account.		

Meeting adjourned.

WM. G. FITZPATRICK, *Secretary.*

I, William G. Fitzpatrick, do hereby certify that the above and foregoing is a true and correct copy of the minutes of a special meeting of the board of directors of the Bosch Magneto Co., held at the office of the president, on Thursday, the 17th day of October, 1918, at 4 p. m.

WM. G. FITZPATRICK.

(Corporate seal of Bosch Magneto Co.)

JULY 31, 1919.

Mr. FRANCIS P. GARVAN,
Alien Property Custodian, New York City.

DEAR SIR: Complying with your request to reduce to writing the information respecting the item of $1,048,029.07 appearing upon the books of the Bosch Magneto Co. as an item owing by Robert Bosch, of Stuttgart, Germany, you are advised as follows:

This item represents a net balance of debits and credits entered in favor of and against Robert Bosch upon the records of the Bosch Magneto Co. covering a period extending back over a period of years. Bosch owned substantially all of the capital stock of the Bosch Magneto Co. and controlled its operation and management. The records of the corporation disclose that although during this period a large amount of profits were earned, only nominal amounts were distributed in the shape of dividends. Large sums were, however, remitted to Bosch, and every such remittance was charged against him on the books of the corporation. These remittances, however, were in fact a distribution of profits, although not regularly declared in the shape of dividends.

In any event the American Bosch Magneto Corporation, at the present time owner of all of the assets of the old Bosch Magneto Co., does not consider that this item represents any valid obligation owing by Robert Bosch to the corporation; and it does not carry this account on its books as an asset; nor does this corporation at the present time assert any claim against Robert Bosch or any assets in this country of Robert Bosch on account of the transaction represented by these bookkeeping entries, nor does it have any intention of asserting any such claim in the future.

Yours, very truly,

AMERICAN BOSCH MAGNETO CORPORATION,
C. D. MURRAY, *President.*

United States District Court, Southern District of New York. Francis P. Garvan as Alien Property Cutodian, libellant, *v.* $50,000 Par Value Bonds, Etc. Francis P. Garvan as Alien Property Custodian, libellant, *v.* $25,000 Par Value Chesapeake & Ohio Bonds, Etc.

Francis G. Caffey, United States Attorney, proctor for libellants; La Rue Brown, Spier Whitaker and Earl B. Barnes, counsel. Root, Clarke, Buckner & Howland, proctors for claimants; Emory R. Buckner, S. W. Howland and Clinton Combes, counsel.

AUGUSTUS N. HAND, *District Judge:*

These two libels are brought under section 17 of the trading-with-the-enemy act to obtain the aid of this court in securing the possession of property determined by the Alien Property Custodian after investigation to be held for or on behalf of or for the benefit of the Munich Insurance Co., a German corporation, and an alien enemy.

The Munich Insurance Co. sought to do business in the State of Connecticut. The statutes of that State forbade any insurance company to expose itself to loss on any one risk to an amount exceeding 10 per cent of its paid up capital and provided that the capital of a foreign insurance company should be: (*a*) Money or securities deposited with the treasurer of the State or with the proper officer of some other State, the minimum amount of such deposit to be $200,000. (*b*) All sums loaned on real estate security in any State of the United States in which fire insurance companies organized under the laws of Connecticut might invest, "provided such real estate, securities and assets shall be held in the United States by trustees who are citizens of the United States approved by the insurance commissioner, for the United States."

By reason of the statute the Munich Insurance Co. executed a trust deed which required the trustees to receive and safely keep all assets and property from time to time delivered to them, "the same to be held, used, and appropriated to and for satisfying the purposes in the act of the legislature above mentioned."

Article 4 of the trust deed provides:

"If at any time debts and liabilities for the security of which this trust is created shall accrue and become due and payable by the company and shall not be otherwise satisfied and payable, the trustees shall have power to appropriate so much of the said trust property as may be necessary to the payment and satisfaction thereof, but no alleged debt or liability shall be so paid or satisfied unless and until the amount and validity of the said alleged debt or liability shall have been admitted by the company, or until the validity and amount thereof have been established by the claimant in due course of law."

Article 9 of the trust deed describes the rights of the insurance company in the corpus of the trust:

"NINTH. After making due provision for the purposes aforesaid and subject to the provisions hereinbefore contained, the trustees shall stand possessed of the said trust fund, at the control and subject to the order of the company, and shall and will use and dispose of the same as the company may direct or appoint. But it is hereby expressly declared and provided that until all the outstanding liabilities and obligations of the company, obsolute or contingent, to policyholders or creditors in the United States are fully paid and discharged, the said trust fund or so much thereof as may be necessary to cover the outstanding liabilities, shall remain in the possession of the trustees for the security and protection of the said policyholders and creditors, anything herein contained to the contrary nothwithstanding."

The trustees are the claimants of about $4,000,000 of cash and securities. The cash is on deposit with Ladenburg, Thalman & Co. subject to the order of the trustees, and the securities are in safe-deposit boxes, rented by the trustees of the National Park Bank.

Section 7 (c) of the trading-with-the-enemy act provides that:

"If the President shall so require any money or other * * * and rights and claims of every character and description, owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of an enemy or ally of enemy * * * which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian; and all property thus acquired shall be held, administered, and disposed of as elsewhere provided in this act."

Both sides agree that section 17 of the trading-with-the-enemy act, which empowers this court to issue such process as may be necessary and proper to enforce the act, affords ample jurisdiction to adjudicate the rights of the parties. The attempt of the Alien Proper Custodian is not to try title, but to obtain possession of the cash and securities which are withheld after specific demand. The libellant insists that section 9 of the act preserves all the substantive rights of the claimants which the change of possession in no wise interferes with.

This section is as follows:

"SEC. 9. That any person, not an enemy, or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of an enemy whose property, or any part thereof, shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owners of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he

may have in such money or other property. If the President shall not so order within 60 days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may at any time before the expiration of six months after the end of the war institute a suit in equity in the district court of the United States for the district in which such claimant resides or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant) to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted, then the money or other property of the enemy or ally of enemy against whom such interest, right, or title is asserted or debt claimed shall be retained in the custody of the Alien Property Custodian or in the Treasury of the United States, as provided in this act, and until final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian or Treasurer of the United States or order of the court or until final judgment or decree shall be entered against the claimant or suit otherwise terminates.

"Except, as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process or execution, or subject to any order or decree of any court."

To safeguard persons who deliver property to the Alien Property Custodian section (7e) provides that:

"Any payment * * * or delivery of money or property made to the Alien Property Custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of the same."

I think the statute entitles the Alien Property Custodian to assert his possessory right and the trustees are given adequate protection under section 9 of the act. It is not necessary for me to go so far as to say that if a determination of this official upon undisputed facts were legally incorrect it would be enforced by the courts merely because his investigation had been made in good faith. Here there can be no doubt that the property belongs to an enemy lien corporation subject to the lien of the trustees. The trust deed in this case created no more than a possessory lien without right on the part of the trustee to enforce it. The trustees hold the securities solely for convenience, because the creditors sought to be protected are contingent and numerous. The illustration of an agister's lien with no right except to hold is opposite. The rights to apply the property upon admission of indebtedness by the company or after decree of court are the rights of mere passive trustees or custodians.

Under such circumstances I think section 8a of the statute by intendment cuts away from the trustees any power to resist this proceeding of the Alien Property Custodian to secure possession. As originally drafted section (8a) provided:

"That any person not an enemy or ally of enemy holding a mortgage, pledge or lien on, or other right in the nature of security in property of an enemy or ally of enemy, may, after default, dispose of such property under such rules and regulations and after such notice as the Secretary of Commerce shall prescribe; and such notice shall have in all respects the same force and effect as if duty served upon the enemy or ally of enemy personally * * *."

This clause was objectionable because departmental regulations were substituted for the method of liquidating ordinary liens afforded by State laws or the agreement of the parties and the section as finally enacted preserved the remedies of lieners but only in a limited class of cases where the "mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy" was one "which by law or by the terms of the instrument creating such mortgage, pledge or lien, or right, may be disposed of on notice or presentation or demand." (Sec. 8a.) It is clear I think that no such mere right to hold as the trustees in the present case possessed was covered by the terms of this provision. Disturbance of bank loans, secured by collateral, by any novel mode of liquidation and interference with foreclosure of ordinary mortgages might have seriously interfered with normal financial operations by American citizens.

Consequently the act was redrafted so as to allow such liens to be enforced in the customary way. No such reason existed for excepting alien like the one under consideration and the failure to except it under familiar principles

rendered the property subject to it liable to seizure as a part of the property of the alien enemy to which the Alien Property Custodian was given a right of possession by the statute. "Expression unius exclusio alterius." (United States *v.* Arredondo, 6 Pet. at p. 725; Stevens *v.* Smith, 10 Wall. 321; Raleigh, etc., Railroad Co. *v.* Reid, 13 Wall. 269; United States *v.* County of Macon, 99 U. S. 582; Dewhurst *v.* Feilden, 7 M. & G. 182.) If the custodian was not entitled to possession of pledged property not within this provision, what was the purpose or need of the provision?

After transfer there can be no doubt that the trustees may assert any rights they have under section 9 of the act to obtain such property as may be necessary to protect American creditors secured by the deed of trust.

An adjudication by this court goes no further than to award possession to the Alien Property Custodian subject to all existing rights which may be asserted under section 9 supra.

The effect of my decision is to hold that the statute gives the right to the Alien Property Custodian to obtain possession of enemy-owned property, irrespective of the existence of liens thereon unless such liens may be disposed of on notice or presentation or demand. In enacting this statute under the war power Congress doubtless realized the fact that much enemy-owned property was subject to possessory liens of various kinds, and that the act would be quite ineffective if third persons, in many cases business associates of the enemy aliens, could indefinitely hold their property or compel a trial on the merits, before transfer of possession could be awarded. Consequently, a right to retain possession was given only to those lienors whose business requirements naturally demanded it. Such persons as the trustees here are not of the precribed class and consequently their right to retain possession as against the Alien Property Custodian must fail.

I may add that the facts here involved do not render the decisions in the cases of Salamandra Insurance Co. *v.* New York Life Insurance & Trust Co. (254 Fed. 852), Keppelman *v.* Keppleman (105 Atl. Rep. 140), or American Exchange National Bank *v.* Palmer (unreported), applicable to this case.

It is urged that the Alien Property Custodian must fail, because the answer denies that he made any investigation. This denial is a mere conclusion in view of the further allegation that he knew all the facts which have been rehearsed above. Such complete and correct information was equivalent to involved investigation. I think the allegations of the answer show not only that he must have made an investigation, but that he reached a right conclusion under the statute. He is, therefore, entitled to a decree on the pleadings awarding possession, which is granted accordingly.

AUGUSTUS N. HAND,
United States District Judge.

Mr. WILLCOX. Let me say one word more: I agree with Gen. Palmer almost entirely in his statement. I give him credit for acting according to his best judgment in most of the matters covered by his statement. My principal object in coming before you was to protest against what still appears to me to be a reflection in his testimony, and the insinuation that his first objection to the sale to the Chase Securities Corporation was because he suspected I was interested in the proposed purchase, and that I was tainted with enemy interest or influence, which would make it unwise to sell the property to any syndicate in which I had an interest.

I submit that there is that reflection in the testimony, and a point I wish to make, and to emphasize, is that an honest and sincere difference of opinion in regard to the ownership of the property held by Meinel & Wemple, in trust for Russian companies, is not a proper ground for any reflection upon the loyalty or good faith, or honesty or sincerity of anyone. We have been just as sincere in our belief that there was no enemy ownership in the property that Mr. Palmer refers to. The only question is, whether the home office in Russia owed money to Hamburg. No one could get any testimony on that, and we had no ground to suspect that there was any such situation,

and we protested. We submit that our attempt to protect the interests in this country that we held for Russian companies is not a ground for suspicion of our attitude or our loyalty or our spirit toward the American Government.

Mr. Palmer, on page 203, says:

> The only question in the minds of the committee was in view of the fact that Mr. Willcox apparently was to be interested to the extent of a one-seventh interest, whether that did not indicate that the German connection was not going to be broken.

Mr. PALMER. I said that was a question in the minds of the committee.

Mr. WILLCOX. I understand.

Then on page 207 he states:

> Well, he told me that it was his sole purpose to liquidate, and he insisted that there were no German interests. I will not say he convinced me of that, because—well, I was convinced that I could require it of him (meaning Thayer) and Willcox, too, and that he would readily consent to it, but I was not convinced that the original plan as he presented it to the advisory committee was not to have Willcox, the agent of the German company, in it.

Now, gentlemen of the committee, I was never the agent of the German company in my life, of any German company, and I submit that that is a reflection upon my attitude in this matter.

Mr. PALMER. Mr. Willcox, if you will permit me, I will say that I had already explained that you were a member of the corporation of Meinel & Wemple, which was alleged to be an agent of German concerns. Possibly that brief reference there might be such that you would take some offense at it, but as to the explanation which I have made elsewhere I do not think you could.

Mr. WILLCOX. On page 203 there is reference to an indictment against Meinel & Wemple. In that connection I want to state that the indictment was dismissed, but that Judge Knox further stated that there had not been anything done which they were not perfectly justified in doing. Furthermore, the statement was made privately to our counsel, I am informed, that the indictment of these men was an outrage and a most disgraceful proceeding, the most disgraceful that ever came before his court.

I do not know that Mr. Palmer's department was responsible for the indictment of Meinel & Wemple. They were indicted because of certain former communications they had sent to a man in Copenhagen who was suspected of having communications with Hamburg, and those communications had been stopped within the 30 days clearly provided by law. After the indictment was published all over the country the district attorney admitted that he had not looked at the law, and that communications might continue for 30 days.

Senator WALSH. We had quite an eminent lawyer to come before us the other day and to tell us that the law was so and so, and afterwards he came back, said there was another provision in the law, and he was mistaken.

Mr. WILLCOX. I say the indictment of these men was a very great injustice, but I do not know who was responsible for it.

I quite freely admit that many matters which have been discussed to-day are matters of opinion and discussion, and I am not criticising Mr. Palmer or his associates for taking action which did not

seem to me to be wise, but I am mainly here to protest against any reflection upon me or my connections or my support of the Government based upon the fact that we have had a difference, and still have a difference, with the Alien Property Custodian regarding the ownership of certain funds which were held in trust for those companies.

We expect to establish, and as soon as we can get the matter in court I am absolutely sure that we will establish, that there is no enemy ownership in that property. We certainly feel that in attempting to show that, and in attempting to disprove the Alien Property Custodian's charge of enemy interest, we are only acting as we are bound to act as trustees of the companies, and that we are not properly subject to any criticism or any suspicion of disloyalty or failure to support the American Government by so carrying out our trust and obligations to our Russian company.

Mr. Chairman and gentlemen of the committee, I thank you very much for your patience.

Mr. PALMER. Mr. Chairman, would you like to have the insurance advisory committee to appear before your subcommittee?

Senator DILLINGHAM. Mr. Palmer, I was going to take that matter up with the committee and had intended to ask them to remain to discuss that and a few other matters.

Senator OVERMAN. Mr. Chairman, I now move that we go into executive session.

(At 1 o'clock p. m. the subcommittee went into executive session, and after a short time adjourned, subject to call by the chairman.)